ATTORNEY GENERAL
STATE OF CONNECTICUT

Request for Proposals

Economist consulting services to analyze electricity market and economic data, prepare studies of market structure and market performance, review evidence of anticompetitive conduct, create economic models, prepare damage and economic impact studies and prepare testimony to be filed with the Federal Energy Regulatory Commission ("FERC" or "Commission") in support of the Complaint and Request for Order to amend the ISO New England Inc.'s ("ISO-NE") Market Rule 1 with regard to the compensation of electric generation facilities in Connecticut filed with the Commission pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.212, by Richard Blumenthal, Attorney General for the State of Connecticut ("CTAG"), the Connecticut Office of Consumer Counsel ("CT OCC"), the Connecticut Municipal Electric Energy Cooperative ("CMEEC") and the Connecticut Industrial

Energy Consumers (“CIEC”) (collectively, the “Connecticut Representatives”).

RICHARD BLUMENTHAL, Attorney General

October 21, 2005

Doc # 003954153

State of Connecticut

Office of the Attorney General

Announcement of Request for Proposals to Provide Economist Consulting Services

October 21, 2005

RFP No. 2005-04 (Economist – FERC / ISO-NE)

Richard Blumenthal, Attorney General for the State of Connecticut ("CTAG"), pursuant to Conn. Gen. Stat. § 3-125, invites proposals from appropriately qualified economists or economic consulting firms to work with the CTAG, the Connecticut Office of Consumer Counsel ("CT OCC"), the Connecticut Municipal Electric Energy Cooperative ("CMEEC") and the Connecticut Industrial Energy Consumers ("CIEC") (collectively, the "Connecticut Representatives"), on a fee basis, under the supervision of the Connecticut Representatives to provide economic consulting services to support the Connecticut Representatives by providing advice, analysis and testimony to be filed with the Federal Energy Regulatory Commission ("FERC" or "Commission") in support of the Complaint and Request for Order to amend the ISO New England Inc.'s ("ISO-NE") Market Rule 1 with regard to the compensation of electric generation facilities in Connecticut filed with the Commission pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.212. Complaint Attached. Proposals must be received by the Office of the Attorney General by 4:30 p.m., local time, on **November 4, 2005**. Proposals received after that time shall not be considered and will be returned unopened. Some contractors may be invited to an oral interview to be scheduled thereafter.

The proposals will be evaluated in order to determine which proposal best combines extremely high ethical standards, high skills, abilities, knowledge, and experience with wholesale electricity markets in general and in New England in particular, as well as financial and economic analysis, knowledge of antitrust principles, antitrust economics, markets and damage analyses, along with reasonable rates. Proposals must include proposed rates on an hourly basis, and a discussion of how the work will be conducted in a cost-effective manner.

Complete details regarding this Request are available at the Attorney General's website, at www.ct.gov/ag, under "Hot Topics," and then under "Economist – FERC / ISO-NE RFP". All communication with the Attorney General's Office must be only as specified in the RFP. No email or telephone inquiries will be accepted.

RICHARD BLUMENTHAL, Attorney General

TABLE OF CONTENTS

Request for Proposals

Economist Consulting Services

Overview

Richard Blumenthal, Attorney General for the State of Connecticut, pursuant to Conn. Gen. Stat. § 3-125, invites proposals from appropriately qualified economists or economic consulting firms to work with the Attorney General ("CTAG") the Connecticut Office of Consumer Counsel ("CT OCC"), the Connecticut Municipal Electric Energy Cooperative ("CMEEC") and the Connecticut Industrial Energy Consumers ("CIEC") (collectively, the "Connecticut Representatives") on a fee basis, under the supervision of the Connecticut Representatives, to provide economic consulting services to support the Connecticut Representatives by providing advice, analysis and testimony to be filed with the Federal Energy Regulatory Commission ("FERC" or "Commission") in support of the Complaint and Request for Order to amend the ISO New England Inc.'s ("ISO-NE") Market Rule 1 with regard to the compensation of electric generation facilities in Connecticut filed with the Commission pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.212 ("Section 206 Complaint"). The CTAG is the chief legal officer of the State of Connecticut. The CTAG is an elected Constitutional officer of the State of Connecticut. Among the CTAG's responsibilities are interventions in various types of proceedings to protect the State, the public interest and the people of the State of Connecticut, and assuring the enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110 *et seq.*, and Antitrust Act, Conn. Gen. Stat. § 35-24 *et seq.*, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses. The CTAG's prosecution of the Section 206 Complaint at the FERC is in furtherance of these overall responsibilities. A necessary adjunct to the CTAG's ability to vigorously and efficiently prosecute the Section 206 Complaint is the need for economist support. The Section 206 Complaint requires complicated economic analyses of wholesale electricity markets in order to determine whether the costs for electricity under those markets remains just and reasonable as required by the Federal Power Act. The CTAG seeks to enter into a contract with a qualified economist or economic consulting firm to provide the above-described services. The selected economist or economic consulting firm will work with the Connecticut Representatives and will be responsible to analyze market and economic data, prepare studies of market structure and market performance, review evidence of anticompetitive conduct, create economic models, prepare damage and economic impact studies and prepare testimony to be filed with the FERC in support of the Section 206 Complaint.

The proposals will be evaluated in order to determine which proposal best combines extremely high ethical standards, high skills, abilities, knowledge, and

experience with wholesale electricity markets in general and in New England in particular, as well as financial and economic analysis, knowledge of antitrust principles, antitrust economics, markets and damage analyses, along with reasonable rates. Proposals must include proposed rates on an hourly basis, and a discussion of how the work will be conducted in a cost-effective manner.

The selected economist or economic consulting firm must enter into a contract with the Office of the Attorney General, substantially in the form of the draft contract set out in Appendix A to this RFP. If any contractor determines that the Contract should be modified in any material way, the contractor should include details in its proposal, along with an indication of whether failure to accept the contractor's suggestions would preclude the contractor from entering into the Contract.

Proposal/ Contract Requirements

I. Contract Period

The State intends that the Contract shall be in effect for two (2) years with the expectation that the Contract may be renewed, unless it is terminated earlier in accordance with its terms.

II. No Pre-proposal Meetings Required

There are no pre-proposal meetings currently scheduled. Rather, questions may be addressed in writing as identified in Instructions to Economists/Economic Consulting Firms, Section II, page 6 of this RFP.

III. Change of Address

In the event a contractor moves or updates contact information, it is the responsibility of the contractor to advise the Attorney General's Office of such changes in writing.

Selection Criteria

Economists or Economic Consulting Firms that respond to this RFP will be evaluated on the basis of their written responses to the RFP, additional written information requested by the Office of the Attorney General and possibly oral interviews. The goal of the evaluation will be to select the contractor that demonstrates the strongest ability to support the Connecticut Representatives in the furtherance of the Section 206 Complaint in a cost effective manner at reasonable rates, taking into consideration the contractor's professional background, experience and fee proposal. The following non-exclusive factors will be considered to assist in making that determination:

- Significant experience in conducting sophisticated economic analyses of competitive wholesale electricity markets.
- Significant knowledge of the Federal Power Act and experience providing testimony as an expert witness at the FERC.
- Significant knowledge of federal and state antitrust law.
- Significant knowledge in antitrust economics, including economic modeling principles.
- Significant experience in working with, accessing and analyzing data and complex databases.
- Ability to communicate and present findings and make appropriate recommendations to the Connecticut Representatives' staff.
- Ability to prepare written reports that incorporate microeconomic analysis.
- Qualifications of economist contractors, including, at a minimum, a Ph.d. Degree in economics or a related discipline, specialized experience in regulated and unregulated electricity markets or a related field that has equipped the contractor with knowledge, skills, and abilities necessary to conduct sound applied analysis and research).
- The ability of the contractor to adequately staff and promptly handle any work requested by the Connecticut Representatives.
- A solid publication record or an established reputation in the field of economics and/or antitrust economics.
- Fee Proposal; including the ability to conduct work effectively and economically.
- Equal employment opportunity record as evidenced by the composition of the economics consulting firm personnel and the firm's affirmative action and equal employment opportunity policies and practices.

- Record of compliance with all applicable ethical rules and rules of professional conduct.

Instructions to Economist(s) or Economic Consulting Firms

I. Proposal Schedule

Release of RFP:	**October 21, 2005**
Questions:	**October 28, 2005**
Proposal Due Date:	**November 4, 2005**, by 4:30 pm

During the period from the announcement of this RFP, and until the Contract is awarded, interested parties may not contact any employee of the State of Connecticut for additional information concerning this proposal, except in writing, directed to Associate Attorney General Joseph Rubin, Office of the Attorney General, 55 Elm Street, Hartford, CT 06106.

Technical questions only concerning issues or problems with access to or downloading of this RFP and associated information from the website may be addressed at any time by e-mail to Evelyn.Godbout@po.state.ct.us.

II. Questions and Additional Information

Questions for the purpose of clarifying the RFP must be submitted in writing and must be received at the Attorney General's Office no later than 4:30 p.m. on **October 28, 2005**. Questions must be delivered to the attention of Associate Attorney General Joseph Rubin, Office of the Attorney General, 55 Elm Street, Hartford, CT 06106. The Office of the Attorney General will endeavor to answer late questions as quickly as possible, although contractors submitting late questions risk not having the answers until after the proposal due date. All questions will be answered solely by posting on the Attorney General's website as one or more addenda to the Request for Proposals. The Office of the Attorney General may, at any time during the RFP process, require that in order for contractors to be considered for the Contract, the contractors must provide additional information and make oral presentations.

III. Sealed Proposals

Proposals must be submitted in a SEALED envelope or carton, clearly marked with RFP Number 2005-04 (Economist) (Economist – FERC / ISO-NE RFP), the date, and the name and address of the contractor. Any material that is not so submitted may not be accepted, or may not be properly logged in on time. Facsimile, Email or unsealed proposals will not be accepted under any circumstances.

IV. Number and Submission of Proposals

A. To be considered, all responses must include all of the following:

1. Cover letter addressed to the Attorney General, signed by an individual authorized to enter into a contract with the State on behalf of the contractor;

2. Responses to the questions asked and information requested in this RFP, including the representation required in Special Terms and Conditions number 15 (Independent Price Determinations) and including the completed Employer Information Report (Appendix B).

B. Contractors should submit one original and four (4) copies of the proposal. Any proposal which is incomplete or does not follow the prescribed format may not be considered.

C. Proposals may be mailed or delivered in person to the address below to arrive by **November 4, 2005**, at 4:30 p.m. **Proposals received after that time will not be accepted and will be sent back unopened**. Postmark dates will not be considered as the basis for meeting any submission deadline. Proposals **will not** be publicly opened on the due date.

State of Connecticut
Office of the Attorney General
Attn.: Associate Attorney General Joseph Rubin
RFP Number 2005-04 (Economist) (Economist Consulting Services RFP)
55 Elm Street
Hartford, CT 06106

D. Concise answers are encouraged. Responses should be prepared on 8 ½ x 11 inch paper using at least 12 point type with standard margins.

V. Authorized Signatures

The proposal must be signed by an authorized official. The proposal must also provide the name, title address and telephone number of individuals with authority to bind the contractor, and of a point-of-contact who may be contacted to clarify the information provided.

VI. Information Required in the Proposal

1. Provide a brief description of your educational and professional experience. If the contractor is an economic consulting firm, provide the firm's history and its main areas of practice. Describe any significant changes in the organization of your firm within the last five years. Provide a detailed description of your experience in analyzing wholesale electricity markets.

2. If the contractor is an economic consulting firm, discuss the primary individuals who would work with the State, including experience, relevant background and particular areas of expertise.

3. Provide a summary of the your key strengths and qualifications in support of your ability to provide the requested services. (Your response to this question may include a discussion of one or more of the state Selection Criteria and should not exceed one and one half pages).

4. If the contractor is an economic consulting firm, provide your firm's federal EEO-1 Form or complete the employment data requested in Appendix B. Please provide a detailed description of your firm's equal opportunity and affirmative action policy. (This policy may be included as an Appendix to your proposal.)

5. Disclose any past or present assignments, relationships or other employment that you or, if the contractor is an economic consulting firm, your firm or any employee of your firm, has or has had that may create a conflict of interest or the appearance of a conflict of interest in serving as an expert for the State in this contract. Discuss any measures that are either in place at your firm or would be taken to identify, disclose and resolve any possible conflicts of interest.

6. Discuss any pending complaints or investigations, or any made or concluded within the past five years, to or by any regulatory body or court regarding you or your firm or its predecessors, or any of its present or former members, employees and associates.

Special Terms and Conditions

1. Conformity and Completeness of Proposals

To be considered acceptable, proposals must be complete and conform to all material RFP instructions and conditions. The Attorney General's Office, in its sole discretion, may disregard defects or deficiencies it determines not to be material, seek additional or clarifying information from proposers, and may reject in whole or in part any proposal if in its judgment the best interests of the State will be served.

2. Stability of Proposed Fees

Any fee proposals must be valid for the entire duration of the Contract.

3. Amendment or Cancellation of the RFP

The Attorney General's Office reserves the right to cancel, amend, modify or otherwise change this RFP at any time if it deems it to be in the best interest of the State to do so.

4. Multiple Award

The Attorney General's Office reserves the right to award to multiple economists or economic consulting firms, which shall have a stated time period after notice of award to refuse acceptance of the award. If the Contractor fails to accept the award within the stated period, the Attorney General's Office may award the Contract to another qualified proposer.

5. Proposal Modifications

No additions or changes to any proposal will be allowed after the proposal due date, unless specifically requested by the Attorney General's Office. The Attorney General's Office, at its option, may seek retraction and/or clarification from any contractor of any discrepancy or contradiction found during its review of proposals.

6. Economists' or Economic Consulting Firms' Presentation of Supporting Evidence

Economists or economic consulting firms must be prepared to provide any evidence of experience, performance, ability, financial resources or other items that the Attorney General's Office deems to be necessary or appropriate to fully establish the performance capabilities represented in their proposals.

7. Economists or Economic Consulting Firms

At the discretion of the Attorney General's Office, economists or economic consulting firms must be able to confirm their ability to provide all proposed services without cost to the State.

8. Misrepresentation in Proposal

The Attorney General's Office may reject the proposal or void any contract award resulting from this RFP if such proposal or other submittal contains any material misrepresentation in connection with this RFP.

9. Erroneous Awards

The Attorney General's Office reserves the right to correct inaccurate awards. This may include, in extreme circumstances, revoking the awarding of the Contract already made to an economist or economic consulting firm and subsequently awarding the Contract to another contractor.

Such action on the part of the Attorney General's Office shall not constitute a breach of contract on the part of the Attorney General's Office since the Contract with the initial economist or economic consulting firm would be deemed void and of no effect as if no contract ever existed between the Attorney General's Office and the economist or economic consulting firm.

10. Proposal Expenses

The Office of the Attorney General will not reimburse for any expenses incurred in connection with the RFP, including the cost of preparing the initial response and any additional information requested and travel expenses relating to an oral presentation.

11. Ownership of Proposals

All proposals shall become the sole property of the State and will not be returned.

12. Validation of Proposals

The proposals shall be binding commitments which the Attorney General's Office may include, by reference or otherwise, into the Contract. The proposals must provide the names, titles, addresses and telephone numbers of those individuals with authority to negotiate the Contract with the Attorney General's Office and contractually bind the economist or economic consulting firm. The proposal must also include evidence that it has been duly delivered on the part of the economist or economic consulting firm, that the persons submitting the proposal have the requisite power and authority to submit and deliver the proposal and subsequently to enter into, execute and deliver and perform on behalf of the economist or economic consulting firm the Contract.

13. Execution of Contract

This RFP is not a contract and, alone, shall not be interpreted as such. Rather, this RFP only serves as the instrument through which proposals are solicited. Once the evaluation of the proposals is complete and an economist(s) or economic consulting firm(s) is selected, the selected proposal(s) and this RFP may then serve as the basis for the Contract that will be negotiated and executed between the Attorney General's Office and the selected economist(s) or economic consulting firm(s). This RFP and the proposal will likely be attached to the Contract as exhibits. If the Attorney General's Office and the initial selected economist or economic consulting firm fail to reach agreement on all issues relative to the Contract within a time determined by the Attorney General, then the Attorney General's Office may commence contract negotiations with another economist or economic consulting firm. The Attorney General's Office may decide at any time to start the RFP process again.

14. Oral Agreement or Arrangements

Any alleged oral agreements or arrangements made by any contractor with any State agency or employee will be disregarded in any State proposal evaluation or associated award.

15. Independent Price Determinations

In the proposals, the economist or economic consulting firm must warrant, represent, and certify that the following requirements have been met in connection with this RFP:

a) The fees and costs proposed have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such process with any other organization or with any competitor;

b) Unless otherwise required by law, the costs quoted have not been knowingly disclosed by the economist or economic consulting firm on a prior basis directly or indirectly to any other organization or to any competitor; and

c) No attempt has been made, or will be made, by the economist or economic consulting firm to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

16. Subletting or Assigning of Contract

The Contract or any portion thereof, or the work provided for therein, or the right, title, or interest of the economist or economic consulting firm therein or thereto may not be sublet, sold, transferred, assigned or otherwise disposed of to any person, firm, or corporation, or other entity without the prior written consent of the Attorney General's Office. No person, firm or corporation, or other entity, other than the economist or economic consulting firm to which the Contract was awarded is permitted to perform

work without the prior written approval of the Attorney General's Office, except as otherwise provided in the final Contract.

17. Freedom of Information

The Office of the Attorney General is a public agency and its records, including responses to this RFP, are public records. *See* Conn. Gen. Stat. §§ 1-200, et seq., and especially §1-210(b)(4) and §1-210(b)(5)(B). Due regard will be given for the protection of proprietary or confidential information contained in all proposals received. However, contractors should be aware that all materials associated with this RFP are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all applicable rules, regulations and administrative decisions. If a firm is interested in preserving the confidentiality of any part of its proposal, it will not be sufficient merely to state generally in the proposal that the proposal is proprietary or confidential in nature and not, therefore, subject to release to third parties. Instead, those particular sentences, paragraphs, pages or sections that a contractor believes to be exempt from disclosure under the FOIA must be specifically identified as such. A convincing explanation and rationale sufficient to justify each exemption consistent with Section 1-210(b) of the FOIA must accompany the proposal. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the firm that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. Contractors should not request that their entire proposal, nor the majority of the proposal, be confidential. As allowed by the FOIA, the Attorney General has the discretion to make public any or all information submitted in this process even if such information falls within an exemption to the FOIA. Any completed contract will be public information.

18. Conformance with Federal, State and Other Requirements

In the Contract, the contractor will represent and warrant that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with all Federal, State, municipal or other governmental department, commission, board, bureau, agency or instrumentality, codes, statutes, acts, ordinances, judgments, decrees, injunctions and regulations.

19. Non-Discrimination and Executive Orders

The Contract shall be subject to the terms and conditions of Conn. Gen. Stat. § 4-250 as well as those set forth in Appendix C concerning nondiscrimination, and the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973 and the provisions of Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, Executive Order No. 3 of Governor M. Jodi Rell, promulgated December 15, 2004, and Executive Order No. 7 of Governor M. Jodi Rell, promulgated June 30, 2005, all of which Executive Orders are attached hereto as Appendix D.

20. Americans with Disabilities Act

The economist or economic consulting firm shall comply with the Americans with Disabilities Act and any other applicable federal laws and regulations.

21. Affirmative Action and Contract Compliance Reporting

Contractors are advised that in addition to evaluating their qualifications, experience, capabilities, competitiveness of cost and conformance to the RFP specifications, weight may also be given to contractors which demonstrate a commitment to affirmative action by full compliance with the Commission on Human Rights and Opportunities regulations.

22. Whistleblowing.

To the extent applicable, contractors shall comply with the provisions of Conn. Gen. Stat. § 4-61dd concerning whistleblowing.

Exhibit A

Contract Between The Office of the Attorney General,
State of Connecticut
And

_____

1. The Contractor shall be compensated for professional services in accordance with the following rate schedule:

   The above hourly rate shall be charged only for actual time spent rendering such services; the Contractor shall not "round off" time. The time spent rendering services shall be billed in units no greater than the tenth of an hour within any single workday. The Attorney General shall not be charged for any other time expended by the Contractor during travel, overnight stays, or the like associated with the performance of the services.

2. Compensation shall be paid only after the submission of itemized documentation, in a form acceptable to the Attorney General, the Associate Attorney General or their respective designees. Billings are to be on a monthly basis. The billings must contain, at a minimum, a detailed description of the work performed, the date of performance, the actual time spent performing the work, the name and position of the person(s) rendering the service and the rate charged for that service. A summary memorandum describing how the service rendered furthered resolution of the matter and the current status of the matter must also accompany the monthly bill. The Attorney General or his designee may, prior to authorizing payment under this section, require the Contractor to submit such additional accounting and information as he deems to be necessary or appropriate. The Contractor shall not be compensated for any time spent preparing any billing documentation. **All bills must be sent to Office of the Attorney General, ATTN: Business Office, 55 Elm Street, Hartford, Connecticut 06106-1774**.

3. The Attorney General agrees to reimburse the Contractor for actual, necessary and reasonable out-of-pocket disbursements and expenses, including long-distance telephone calls, reasonable expenses for transportation, specifically excluding first class airfare, and reasonable lodging and meals associated with overnight travel as approved in advance and in writing by the Attorney General or his designee. The Attorney General shall not reimburse the Contractor for any overhead related expenses, including, but not limited to, duplicating, secretarial, facsimile, clerical staff, library staff, and proof-reading staff, unless they are approved in advance and in writing by the Attorney General.

4. The Contractor shall not be compensated for time spent in consultation with any lawyer or other employee of the Attorney General concerning the administration of this Agreement and/or issues relating to billing. Absent approval by the Attorney General, compensation for communication between or among staff within the Contractor's firm is limited to the time and billing rate of the most senior staff member participating in the communication. These charges must be accompanied by detailed descriptions setting forth the purpose of the communication and summarizing its details.

5. Absent the prior written consent of the Attorney General or his designee, the Contractor shall not be compensated for the attendance or participation of more than one staff member at any proceeding or meeting in connection with the provision of services under this Agreement. When more than one staff member has attended or participated in any such proceeding without the prior written consent of the Attorney General or his designee, the Contractor shall be compensated for the time of the most senior staff member in attendance.

6. The Attorney General shall approve for payment all undisputed costs, as soon as the documentation can properly be processed in accordance with usual state practice.

7. The Contractor shall maintain accurate records and accounts of all expenditures under this Agreement as well as satisfactory evidence of payment to assure proper accounting. The Contractor shall ensure that all confidential or privileged records are kept in secured areas and shall take reasonable precautions to protect the records in its custody from the dangers of fire, theft, flood, natural disasters and other physical threats, as well as unauthorized access. Such records shall be made available and furnished upon request to the Attorney General or his designee until six years after termination of this Agreement.

8. Maximum compensation under this Agreement shall not exceed [amount to be determined] dollars per year for a maximum under the contract of [amount to be determined] dollars.

9. Compensation and reimbursement provided under this Agreement constitutes full and complete payment for all costs and expenses incurred or assumed by the Contractor in performing this Agreement. No other costs, expenses or overhead items shall be reimbursed by the Attorney General.

10. The Attorney General, on written notice, may immediately suspend, postpone, abandon, or terminate this Agreement at any time and for any reason, including convenience, and such action shall in no event be deemed to be a breach of contract.

11. Upon receipt of written notification from the Attorney General of termination, the Contractor shall immediately cease to perform the services under this Agreement. The Contractor shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper or any other form, that may be in his possession or custody, and shall transmit the same to the Attorney General or his designee as soon as possible, and no later than the 15th day following the receipt of the above written notice of termination, together with a description of the cost of the services performed to said date of termination.

12. The Contractor, on 30 days prior written notice to the Attorney General, may terminate this Agreement. On the effective date of termination, the Contractor shall immediately cease to perform services under this Agreement. The Contractor shall assemble all material that has been prepared, developed, furnished, or obtained under the terms of this Agreement, in electronic, magnetic, paper, or any other form, that may be in its possession or custody, and shall deliver the same to the Attorney General or his designee

on or before the 15th day following the transmittal of the written notice of termination, together with a description of the cost of the services performed to said date of termination.

13. The Contractor shall perform the services under this Agreement at such times and in such sequence as may be reasonably directed by the Attorney General, Associate Attorney General, or their respective designee(s).

14. The Contractor represents and warrants the Attorney General that the Contractor has duly authorized the execution and delivery of this Agreement and the performance of the contemplated services; that the Contractor will comply with all applicable state and federal laws and municipal ordinances in satisfying its obligations to the Attorney General under and pursuant to this Agreement; the execution, delivery and performance of this Agreement by the Counsel will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or any department; (iii) any indenture, agreement, document, or other instrument to which it is a party or by which it may be bound.

15. The Contractor shall not copy or divulge to any third party any information or any data in any form obtained or produced in connection with the performance of its duties or responsibilities pursuant to this Agreement other than in connection with the performance of those duties and responsibilities.

16. The Contractor shall not consult for or advise any other client if such representation will materially affect its duties or obligations to the State of Connecticut or the Attorney General or create an appearance of impropriety.

17. Unless the Attorney General designates otherwise in writing, all information or data, in any form, in all papers, recordings, documents and instruments generated or collected by the Counsel, or any subcontractor, in the scope of his work under this Agreement shall be deemed to be the exclusive property of the State of Connecticut and no one else shall have any right, including, but not limited to, intellectual property rights, including copyright and trademark rights, in those items.

18. The Contractor shall indemnify, defend and hold harmless the State and its successors and assigns from and against all actions (pending or threatened and whether at law or in equity in any forum), liabilities, damages, losses, costs and expenses, including but not limited to reasonable attorneys' and other professionals' fees, resulting from (i) misconduct or negligent or wrongful acts (whether of commission or omission) of the Contractor or any of its members, directors, officers, shareholders, representatives, agents, servants, consultants, employees or other persons or entity with whom the Contractor is in privities of oral or written (collectively the "Contractor Parties"); (ii) liabilities arising, directly or indirectly, in connection with this Agreement, out of the Contractor Parties' Acts concerning its or their duties and obligations as set forth in this Agreement; and (iii) damages, losses, costs and expenses, including but not limited to, attorneys and other professionals' fees, that may arise out of such claims and/or liabilities

for bodily injury and/or property damage. This indemnity shall not be limited by reason of any insurance coverage required of the Contractor. The Attorney General shall provide timely notice to Contractor of any such pending action.

19. The Contractor shall not use, raise or plead the defense of sovereign or governmental immunity in the adjustment or settlement of any claim against the Contractor arising out of the work performed under this Agreement, or as a defense in any claim, unless specifically authorized to do so in writing by the Attorney General or his designee.

20. Any and all amendments, changes, extensions, revisions, or discharges of this Agreement, in whole or in part, on one or more occasions, shall not be invalid or unenforceable because of lack or insufficiency of consideration, provided, however, that such amendments, extensions, revisions, or discharges are in writing and executed by the parties.

21. On or before the effective date of this Agreement, the Contractor shall have secured, and shall maintain during the term of this Agreement, all at its sole cost and expense (i) such appropriately skilled and competent personnel and supporting staff in adequate numbers; and (ii) such equipment as are reasonably necessary or appropriate to fully perform the services to the satisfaction of the Attorney General. The personnel shall not be employees of or have any contractual relationship with the Office of the Attorney General. All the services shall be performed by the Contractor under his supervision, and all personnel engaged in the services shall be fully qualified and shall be authorized or permitted under state or local law to perform the applicable services.

22. No partner, owner, director and/or employee, with managerial and/or discretionary authority, of the Contractor may directly or indirectly make financial donations to any candidate for the Office of the Attorney General of the State of Connecticut during the course of this Agreement except that this paragraph shall not be effective until and unless litigation now pending in the United States District court for the District of Connecticut is resolved in a manner which does not affect the validity of this provision.

23. This Agreement, its terms and conditions and claims arising there from, shall be governed by Connecticut law and court decisions without giving effect to Connecticut's principles of conflicts of laws. Any dispute arising out of this Agreement shall be subject to the exclusive jurisdiction of the courts of the State of Connecticut and the Contractor hereby waives any objection which it may now or hereafter have to the laying of venue of any actions in any forum and further irrevocably submits to the jurisdiction of any of those courts in any action.

24. The parties each bind themselves, their partners, successors, assigns, and legal representatives with respect to all covenants of this Agreement.

25. This Agreement incorporates all the understandings of the parties and supersedes any and all agreements reached by the parties prior to the execution of this Agreement, whether oral or written, and no alteration, modification or interruption of this Agreement shall be binding unless in writing and duly executed by the parties.

26. If any provision of this Agreement, or application to any party or circumstances, is held invalid by any court of competent jurisdiction, the balance of the provisions of this Agreement, or their application to any party or circumstances, shall not be affected, but only if the balance of the provisions of this Agreement will then continue to conform to the requirements of applicable laws.

27. The waiver of a term or condition by the Attorney General or his designee shall not entitle the Contractor to any future waivers of the same or different terms or conditions; impose any duties, obligations, responsibilities on the Attorney General or any department not already in the Agreement, as amended, modified or superseded; or subject the Attorney General or department to any Claims.

28. References in the masculine gender shall also be construed to apply to the feminine and neuter genders, as the content requires.

29. Nothing in this Agreement shall be construed as a waiver or limitation of sovereign immunity.

30. Any notice required or permitted to be given under this Agreement shall be deemed to be given when hand delivered or one business day after pick up by a major overnight express service, in either case addressed to the parties below:

    If to the Contractor:

    Attention: _____

    TITLE
    ADDRESS
    TELEPHONE
    FAX

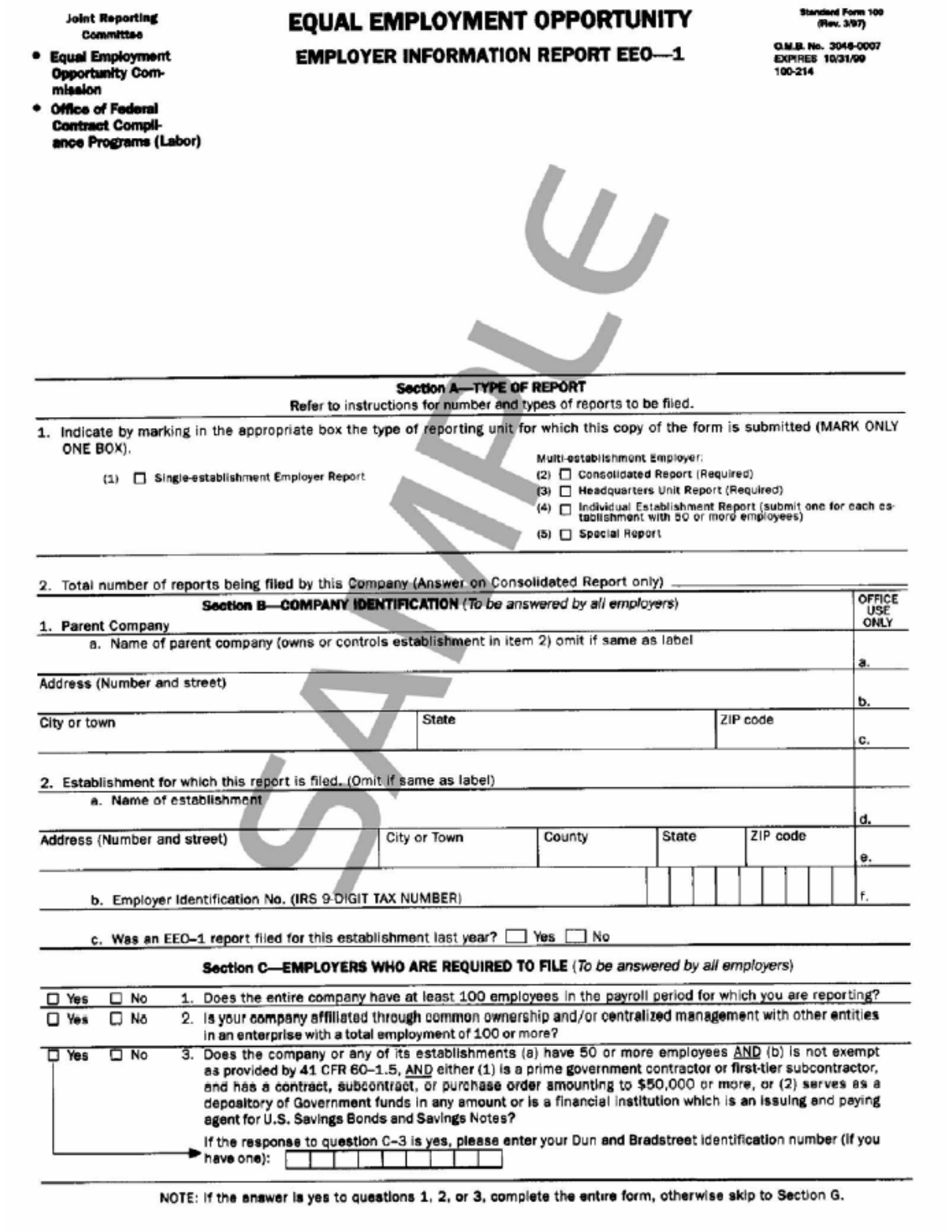
    If to the Attorney General:

    Assistant Attorney General John S. Wright
    Office of the Connecticut Attorney General
    10 Franklin Square
    New Britain, CT 06051

    or in each case to such other addresses either party may from time to time designate by giving notice in writing to the other party. Telephone and facsimile numbers are for informational purposes only. Effective notice will be deemed given only as provided above.

31. Time is of the essence in this Agreement.

APPENDIX B



Joint Reporting Committee
- Equal Employment Opportunity Commission
- Office of Federal Contract Compliance Programs (Labor)

EQUAL EMPLOYMENT OPPORTUNITY

EMPLOYER INFORMATION REPORT EEO—1

Standard Form 100 (Rev. 3/97)

O.M.B. No. 3046-0007
EXPIRES 10/31/99
100-214

SAMPLE

Section A—TYPE OF REPORT

Refer to instructions for number and types of reports to be filed.

1. Indicate by marking in the appropriate box the type of reporting unit for which this copy of the form is submitted (MARK ONLY ONE BOX).

(1) ☐ Single-establishment Employer Report

Multi-establishment Employer:
(2) ☐ Consolidated Report (Required)
(3) ☐ Headquarters Unit Report (Required)
(4) ☐ Individual Establishment Report (submit one for each establishment with 50 or more employees)
(5) ☐ Special Report

2. Total number of reports being filed by this Company (Answer on Consolidated Report only) _____

Section B—COMPANY IDENTIFICATION (*To be answered by all employers*) — OFFICE USE ONLY

1. Parent Company

a. Name of parent company (owns or controls establishment in item 2) omit if same as label — a.

Address (Number and street) — b.

City or town | State | ZIP code — c.

2. Establishment for which this report is filed. (Omit if same as label)

a. Name of establishment — d.

Address (Number and street) | City or Town | County | State | ZIP code — e.

b. Employer Identification No. (IRS 9-DIGIT TAX NUMBER) — f.

c. Was an EEO–1 report filed for this establishment last year? ☐ Yes ☐ No

Section C—EMPLOYERS WHO ARE REQUIRED TO FILE (*To be answered by all employers*)

☐ Yes ☐ No 1. Does the entire company have at least 100 employees in the payroll period for which you are reporting?

☐ Yes ☐ No 2. Is your company affiliated through common ownership and/or centralized management with other entities in an enterprise with a total employment of 100 or more?

☐ Yes ☐ No 3. Does the company or any of its establishments (a) have 50 or more employees AND (b) is not exempt as provided by 41 CFR 60–1.5, AND either (1) is a prime government contractor or first-tier subcontractor, and has a contract, subcontract, or purchase order amounting to $50,000 or more, or (2) serves as a depository of Government funds in any amount or is a financial institution which is an issuing and paying agent for U.S. Savings Bonds and Savings Notes?

If the response to question C–3 is yes, please enter your Dun and Bradstreet identification number (if you have one): ☐☐☐☐☐☐☐☐☐

NOTE: If the answer is yes to questions 1, 2, or 3, complete the entire form, otherwise skip to Section G.

Section D—EMPLOYMENT DATA

Employment at this establishment—Report all permanent full-time and part-time employees including apprentices and on-the-job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered as zeros.

JOB CATEGORIES		NUMBER OF EMPLOYEES										
			MALE					FEMALE				
		OVERALL TOTALS (SUM OF COL. B THRU K)	WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE	WHITE (NOT OF HISPANIC ORIGIN)	BLACK (NOT OF HISPANIC ORIGIN)	HISPANIC	ASIAN OR PACIFIC ISLANDER	AMERICAN INDIAN OR ALASKAN NATIVE
		A	B	C	D	E	F	G	H	I	J	K
Officials and Managers	1											
Professionals	2											
Technicians	3											
Sales Workers	4											
Office and Clerical	5											
Craft Workers (Skilled)	6											
Operatives (Semi-Skilled)	7											
Laborers (Unskilled)	8											
Service Workers	9											
TOTAL	10											
Total employment reported in previous EEO–1 report	11											

NOTE: Omit questions 1 and 2 on the Consolidated Report.

1. Date(s) of payroll period used:

2. Does this establishment employ apprentices?
   1 ☐ Yes 2 ☐ No

Section E—ESTABLISHMENT INFORMATION *(Omit on the Consolidated Report)*

1. What is the major activity of this establishment? (Be specific, i.e., manufacturing steel castings, retail grocer, wholesale plumbing supplies, title insurance, etc. Include the specific type of product or type of service provided, as well as the principal business or industrial activity.)

OFFICE USE ONLY

g.

Section F—REMARKS

Use this item to give any identification data appearing on last report which differs from that given above, explain major changes in composition of reporting units and other pertinent information.

Section G—CERTIFICATION *(See instructions G)*

Check one
1 ☐ All reports are accurate and were prepared in accordance with the instructions (check on consolidated only)
2 ☐ This report is accurate and was prepared in accordance with the instructions.

Name of Certifying Official	Title	Signature	Date

Name of person to contact regarding this report (Type or print)	Address (Number and Street)			
Title	City and State	ZIP Code	Telephone Number (Including Area Code)	Extension

All reports and information obtained from individual reports will be kept confidential as required by Section 709(e) of Title VII.
WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW, U.S. CODE, TITLE 18, SECTION 1001.

APPENDIX C

NONDISCRIMINATION PROVISIONS

A. The following subsections are set forth here as required by section 4a-60 of the Connecticut General Statutes:

> (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut. The contractor further agrees to take affirmative action to insure that contractors with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved; (2) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission; (3) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and contractors for employment; (4) the contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; (5) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.

B. If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.

C. "Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise and (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

D. Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

E. The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

F. The contractor shall include the provisions of section A above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

G. The following subsections are set forth here as required by section 4a-60a of the Connecticut General Statutes:

> (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be

provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and contractors for employment; (3) the contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; (4) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

H. The contractor shall include the provisions of section G above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

APPENDIX D – EXECUTIVE ORDERS

STATE OF CONNECTICUT
BY HIS EXCELLENCY
THOMAS J. MESKILL
GOVERNOR
EXECUTIVE ORDER NO. THREE

WHEREAS, sections 4-61d(b) and 4-114a of the 1969 supplement to the general statutes require nondiscrimination clauses in state contracts and subcontracts for construction on public buildings, other public works and goods and services, and

WHEREAS, section 4-61e(c) of the 1969 supplement to the general statutes requires the labor department to encourage and enforce compliance with this policy by both employers and labor unions, and to promote equal employment opportunities, and

WHEREAS, the government of this state recognizes the duty and desirability of its leadership in providing equal employment opportunity, by implementing these laws,

NOW, THEREFORE, I, THOMAS J. MESKILL, Governor of the State of Connecticut, acting by virtue of the authority vested in me under section twelve of article fourth of the constitution of the state, as supplemented by section 3-1 of the general statutes, do hereby ORDER and DIRECT, as follows, by this Executive Order:

I

The labor commissioner shall be responsible for the administration of this Order and shall adopt such regulations as he deems necessary and appropriate to achieve the purposes of this Order. Upon the promulgation of this Order, the commissioner of finance and control shall issue a directive forthwith to all state agencies, that henceforth all state contracts and subcontracts for construction on public buildings, other public works and goods and services shall contain a provision rendering such contract or subcontract subject to this Order, and that such contract or subcontract may be cancelled, terminated or suspended by the labor commissioner for violation of or noncompliance with this Order or state or federal laws concerning nondiscrimination, notwithstanding that the labor commissioner is not a party to such contract or subcontract.

II

Each contractor having a contract containing the provisions prescribed in section 4-114a of the1969 supplement to the general statutes, shall file, and shall cause each of his subcontractors to file, compliance reports with the contracting agency or the labor commissioner, as may be directed such reports shall be filed within such times and shall contain such information as to employment policies and statistics of the

contractor and each subcontractor, and shall be in such form as the labor commissioner may prescribe. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order or any preceding similar Order, and in that event to submit on behalf of themselves and their proposed subcontractors compliance reports prior to or as an initial part of their bid or negotiation of a contract.

III

Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor organization or employment agency as defined in section 31-122 of the general statutes, the compliance report shall identify the said organization or agency and the contracting agency or the labor commissioner may require a compliance report to be filed with the contracting agency or the labor commissioner, as may be directed, by such organization or agency, signed by an authorized officer or agent of such organization or agency, with supporting information, to the effect that the signer's practices and policies, including but not limited to matters concerning personnel, training, apprenticeship, membership, grievance and representation, and upgrading, do not discriminate on grounds of race, color, religious creed, age, sex or national origin, or ancestry of any individual, and that the signer will either affirmatively cooperate in the implementation of the policy and provisions of this Order, or that it consents and agrees that recruitment, employment and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order.

IV

The labor commissioner may by regulation exempt certain classes of contracts, subcontracts or purchase orders from the implementation of this Order, for standard commercial supplies or raw materials, for less than specified amounts of money or numbers of workers or for subcontractors below a specified tier. The labor commissioner may also provide by regulation for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the state contract, provided only that such exemption will not interfere with or impede the implementation of this Order, and provided further, that in the absence of such an exemption, all facilities shall be covered by the provisions of this Order.

V

Each contracting agency shall be primarily responsible for obtaining compliance with the regulations of the labor commissioner with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the regulations of the labor commissioner in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of

this Order and of the regulations of the labor commissioner issued pursuant to this Order. They are directed to cooperate with the labor commissioner and to furnish the labor commissioner such information and assistance as he may require in the performance of his functions under this Order. They are further directed to appoint or designate from among the personnel of each agency, compliance officers, whose duty shall be to seek compliance with the objectives of this Order by conference, conciliation, mediation, or persuasion.

VI

The labor commissioner may investigate the employment practices and procedures of any state contractor or subcontractor and the practices and policies of any labor organization or employment agency hereinabove described, relating to employment under the state contract, as concerns nondiscrimination by such organization or agency as hereinabove described, or the labor commissioner may initiate such investigation by the appropriate contract agency, to determine whether or not the contractual provisions hereinabove specified or statutes of the state respecting them have been violated. Such investigation shall be conducted in accordance with the procedures established by the labor commissioner and the investigating agency shall report to the labor commissioner any action taken or recommended.

VII

The labor commissioner shall receive and investigate or cause to be investigated complaints by employees or prospective employees of a state contractor or subcontractor or members or contractors for membership or apprenticeship or training in a labor organization or employment agency hereinabove described, which allege discrimination contrary to the contractual provisions specified hereinabove or state statutes requiring nondiscrimination in employment opportunity. If this investigation is conducted for the labor commissioner by a contracting agency, that agency shall report to the labor commissioner what action has been taken or is recommended with regard to such complaints.

VIII

The labor commissioner shall use his best efforts, directly and through contracting agencies, other interested federal, state and local agencies, contractors and all other available instrumentalities, including the commission on human rights and opportunities, the executive committee on human rights and opportunities, and the apprenticeship council under its mandate to provide advice and counsel to the labor commissioner in providing equal employment opportunities to all apprentices and to provide training, employment and upgrading opportunities for disadvantaged workers, in accordance with section 31-51(d) of the l969 supplement to the general statutes, to cause any labor organization or any employment agency whose members are engaged in work under government contracts or referring workers or providing or supervising apprenticeship or training for or in the course of work under a state contract or subcontract to cooperate in the implementation of the purposes of

this Order. The labor commissioner shall in appropriate cases notify the commission on human rights and opportunities or other appropriate state or federal agencies whenever it has reason to believe that the practices of any such organization or agency violate equal employment opportunity requirements of state or federal law.

IX

The labor commissioner or any agency officer or employee in the executive branch designated by regulation of the labor commissioner may hold such hearings, public of private, as the labor commissioner may deem advisable for compliance, enforcement or educational purposes under this Order.

X

(a) The labor commissioner may hold or cause to be held hearings, prior to imposing ordering or recommending the imposition of penalties and sanctions under this Order. No order for disbarment of any contractor from further state contracts shall be made without affording the contractor an opportunity for a hearing. In accordance with such regulations as the labor commissioner may adopt, the commissioner or the appropriate contracting agency may

> (1) Publish or cause to be published the names of contractors or labor organizations or employment agencies as hereinabove described which it has concluded have complied or failed to comply with the provisions of this Order or the regulations of the labor commissioner in implementing this Order.
>
> (2) Recommend to the commission on human rights and opportunities that in cases in which there is substantial or material violation or threat thereof of the contractual provision or related state statutes concerned herein, appropriate proceedings be brought to enforce them, including proceedings by the commission on its own motion under chapter 563 of the general statutes and the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly or seek to prevent directly or indirectly compliance with the provisions of this Order.
>
> (3) Recommend that criminal proceedings be brought under chapter 939 of the general statutes.
>
> (4) Cancel, terminate, suspend or cause to be cancelled, terminated, or suspended in accordance with law any contract or any portion or portions thereof for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, suspended absolutely or

their continuance conditioned upon a program for fixture compliance approved by the contracting agency.

(5) Provide that any contracting agency shall refrain from entering into any further contracts or extensions or modifications of existing contracts with any contractor until he has satisfied the labor commissioner that he has established and will carry out personnel and employment policies compliant with this Order.

(6) Under regulations prescribed by the labor commissioner each contracting agency shall make reasonable efforts within a reasonable period of time to secure compliance with the contract provisions of this Order by methods of conference conciliation, mediation or persuasion, before other proceedings shall be instituted under this Order or before a state contract shall be cancelled or terminated in whole or in part for failure of the contractor or subcontractor to comply with the contract provisions of state statute and this Order.

(b) Any contracting agency taking any action authorized by this Order, whether on its own motion or as directed by the labor commissioner or pursuant to his regulations shall promptly notify him of such action. Whenever the labor commissioner makes a determination under this Order, he shall promptly notify the appropriate contracting agency and other interested federal, state and local agencies of the action recommended. The state and local agency or agencies shall take such action and shall report the results thereof to the labor commissioner within such time as he shall specify.

XI

If the labor commissioner shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless he has satisfactorily complied with the provisions of this Order, or submits a program, for compliance acceptable to the labor commissioner, or if the labor commissioner so authorizes, to the contracting agency.

XII

Whenever a contracting agency cancels or terminates a contract, or a contractor has been disbarred from, further government contracts because of noncompliance with the contract provisions with regard to nondiscrimination, the labor commissioner or the contracting agency shall rescind such disbarment, upon the satisfaction of the labor commissioner that the contractor has purged himself of such noncompliance and will thenceforth carry out personnel and employment policies of nondiscrimination in compliance with the provision of this order.

XIII

The labor commissioner may delegate to any officer, agency or employee in the executive branch any function or duty of the labor commissioner under this Order except authority to promulgate regulations of a general nature.

XIV

This Executive Order supplements the Executive Order issued on September 28, 1967. All regulations, orders, instructions, designations and other directives issued heretofore in these premises, including those issued by the heads of various departments or agencies under or pursuant to prior order or statute, shall remain in full force and effect, unless and until revoked or superceded by appropriate authority, to the extent that they are not inconsistent with this Order.

This Order shall become effective thirty days after the date of this Order.

Dated at Hartford, Connecticut, this 16th day of June, 1971.

Thomas J. Meskill, GOVERNOR

Filed this ____ day of June, 1971.

STATE OF CONNECTICUT
BY HIS EXCELLENCY
THOMAS J. MESKILL
GOVERNOR
EXECUTIVE ORDER NO. SEVENTEEN

WHEREAS, Section 31-237 of the General Statutes of Connecticut as amended requires the maintaining of the established free services of the Connecticut State Employment Service to both employers and prospective employees and

WHEREAS, Section 31-5 of the General Statutes of Connecticut requires that no compensation or fee shall be charged or received directly or indirectly for the services of the Connecticut State Employment Service and

WHEREAS, large numbers of our citizens who have served in the Armed Forces of our nation are returning to civilian life in our state and seeking employment in civilian occupations and

WHEREAS, we owe a duty as well as gratitude to these returning veterans including the duty to find suitable employment for them and

WHEREAS, many of our handicapped citizens are fully capable of employment and are entitled to be placed in suitable employment and

WHEREAS, many of the citizens of our state who are unemployed are unaware of the job openings and employment opportunities which do in fact exist in our state and

WHEREAS, notwithstanding the free services of the Connecticut State Employment Service, many of our Connecticut employers do not use its free services or do not avail themselves fully of all the services offered,

NOW, THEREFORE, I, THOMAS J. MESKILL, Governor of the State of Connecticut, acting by virtue of the authority vested in me under the fourth article of the Constitution of the State and in accordance with Section 3-1 of the General Statutes, do hereby ORDER and direct, as follows, by this Executive Order:

I. The Labor Commissioner shall be responsible for the administration of this Order and shall do all acts necessary and appropriate to achieve its purpose. Upon promulgation of this Order, the Commissioner of Finance and Control shall issue a directive forthwith to all state agencies, that henceforth all state contracts and subcontracts for construction on public buildings, other public works and goods and services shall contain a provision rendering such contract or subcontract subject to this Order, and that such contract or subcontract may be cancelled, terminated or suspended by the Labor Commissioner for violation of or noncompliance with this Order, notwithstanding that the Labor Commissioner is not a party to such contract or subcontract.

II. Every contractor and subcontractor having a contract with the state or any of its agencies, boards, commissions, or departments, every individual partnership, corporation, or business entity having business with the state or who or which seeks to do business with the state, and every bidder or prospective bidder who submits a bid or replies to an invitation to bid on any state contract shall list all employment openings with the office of the Connecticut State Employment Service in the area where the work is to be performed or where the services are to be rendered.

III. All state contracts shall contain a clause which shall be a condition of the contract that the contractor and any subcontractor holding a contract directly under the contractor shall list al employment openings with the Connecticut State Employment Service. The Labor Commissioner may allow exceptions to listings of employment openings which the contractor proposes to fill from within its organization from employees on the rolls of the contractor on the date of publication of the invitation to bid or the date on which the public announcement was published or promulgated advising of the program concerned.

IV. Each contracting agency of the state shall be primarily responsible for obtaining compliance with this Executive Order. Each contracting agency shall appoint or designate from among its personnel one or more persons who shall be responsible for compliance with the objectives of this Order.

V. The Labor Commissioner shall be and is hereby empowered to inspect the books, records, payroll and personnel data of each individual or business entity subject to this Executive Order and may hold hearings or conferences, formal or informal, in pursuance of the duties and responsibilities hereunto delegated to the Labor Commissioner.

VI. The Labor Commissioner or any agency officer or employee in the executive branch designated by regulation of the Labor Commissioner may hold such hearings, public or private, as the Labor Commissioner may deem advisable for compliance, enforcement or educational purposes under this Order.

VII. (a) The Labor Commissioner may hold or cause to be held hearings, prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. In accordance herewith, the Commissioner or the appropriate contracting agency may suspend, cancel, terminate, or cause to be suspended, cancelled, or terminated in accordance with law any contract or portion or portions thereof for failure of the contractor or subcontractor to comply with the listing provisions of the contract. Contracts may be cancelled, terminated, suspended absolutely or their continuance conditioned upon a program for future compliance approved by the contracting agency.

(b) Any contracting agency taking any action authorized by this Order, whether on its own motion or as directed by the Labor Commissioner, shall promptly notify him of such action. Whenever the Labor Commissioner makes a determination under this Order, he shall promptly notify the appropriate contracting agency of the action recommended. The agency shall report the results to the Labor Commissioner promptly.

VIII. If the Labor Commissioner shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless he has satisfactorily complied with the provisions of this Order.

This Order shall become effective sixty days after the date of this Order.

Dated at Hartford, Connecticut, this 15th day of February 1973.

Thomas J.
Meskill
Governor

STATE OF CONNECTICUT
BY HIS EXCELLENCY
JOHN G. ROWLAND
GOVERNOR
EXECUTIVE ORDER NO. SIXTEEN

WHEREAS, the State of Connecticut recognizes that workplace violence is a growing problem that must be addressed; and

WHEREAS, the State is committed to providing its employees a reasonably safe and healthy working environment, free from intimidation, harassment, threats, and /or violent acts; and

WHEREAS, violence or the threat of violence by or against any employee of the State of Connecticut or member of the public in the workplace is unacceptable and

will subject the perpetrator to serious disciplinary action up to and including discharge and criminal penalties.

NOW, THEREFORE, I, John G. Rowland, Governor of the State of Connecticut, acting by virtue of the authority vested in me by the Constitution and by the statutes of this state, do hereby ORDER and DIRECT:

1. That all state agency personnel, contractors, subcontractors, and vendors comply with the following Violence in the Workplace Prevention Policy:

   The State of Connecticut adopts a statewide zero tolerance policy for workplace violence.

   Therefore, except as may be required as a condition of employment:

   - o No employee shall bring into any state worksite any weapon or dangerous instrument as defined herein.
   - o No employee shall use, attempt to use, or threaten to use any such weapon or dangerous instrument in a state worksite.
   - o No employee shall cause or threaten to cause death or physical injury to any individual in a state worksite.

   Weapon means any firearm, including a BB gun, whether loaded or unloaded, any knife (excluding a small pen or pocket knife), including a switchblade or other knife having an automatic spring release device, a stiletto, any police baton or nightstick or any martial arts weapon or electronic defense weapon.

   Dangerous instrument means any instrument, article, or substance that, under the circumstances, is capable of causing death or serious physical injury.

   Violation of the above reasonable work rules shall subject the employee to disciplinary action up to and including discharge.

2. That each agency must prominently post this policy and that all managers and supervisors must clearly communicate this policy to all state employees
3. That all managers and supervisors are expected to enforce this policy fairly and uniformly.
4. That any employee who feels subjected to or witnesses violent, threatening, harassing, or intimidating behavior in the workplace immediately report the incident or statement to their supervisor, manager, or human resources office.
5. That any employee who believes that there is a serious threat to their safety or the safety of others that requires immediate attention notify proper law enforcement authorities and his or her manager or supervisor
6. That any manager or supervisor receiving such a report shall immediately contact their human resources office to evaluate, investigate and take appropriate action.
7. That all parties must cooperate fully when questioned regarding violations of this policy.

8. That all parties be advised that any weapon or dangerous instrument at the worksite will be confiscated and that there is no reasonable expectation of privacy with respect to such items in the workplace.
9. That this order applies to all state employees in the executive branch.
10. That each agency will monitor the effective implementation of this policy.
11. That this order shall take effect immediately.

Dated in Hartford, Connecticut, this fourth day of August, 1999.

STATE OF CONNECTICUT

BY HER EXCELLENCY

M. JODI RELL

GOVERNOR

EXECUTIVE ORDER NO. 3

WHEREAS, the state government contracting process and procedures must be open, honest fair and accessible at all times; and

WHEREAS, a growing demand for information in electronic form and for direct access to electronic records is changing the way the public accesses government information and documents; and

WHEREAS, making state bids and contracts easily available to the public and vendor community at all times in a single electronic location will increase the ease in which information is exchanged; and

WHEREAS, a single location for information regarding the purchase of goods and services will provide for more accurate and less cumbersome auditing practices and procedures; and

WHEREAS, a single portal for procurement information will increase transparency of the procurement process; and

WHEREAS, a single location for information regarding the purchase of goods and services will increase interest in vendors in submitting competitive bids; and

WHEREAS, an increased interest by vendors and an increased transparency of the procurement process will result in greater and more

active participation in the state contracting process by small businesses and women and minority owned enterprises; and

WHEREAS, a single location for such information will facilitate the communication of changes and amendments to state contracts; and

WHEREAS, a single portal for procurement information will reduce postage and paper expenses, internal staffing time and advertising costs to the extent permitted by state law and as reasonably practicable and will increase the efficiency of the procurement process.

NOW, THEREFORE, I, M. Jodi Rell, Governor of the State of Connecticut, acting by virtue of the authority vested in me by the Constitution and by the statutes of this state, do hereby **ORDER** and **DIRECT** that:

(1) The Department of Administrative Services shall establish and maintain a single electronic portal available on the World Wide Web and located on the Department of Administrative Services' website (the "State Contracting Portal") for purposes of posting all contracting opportunities with state agencies in the executive branch and all higher education agencies and institutions.

(2) The State Contracting Portal shall, among other things, include: (i) all bids, requests for proposals, related materials and all resulting contracts and agreements by state agencies; (ii) a searchable database for locating information; (iii) A State Procurement & Contract Manual or other similar information designated by the Department of Administrative Services as describing approved contracting processes and procedures; and (iv) prominent features to encourage the active recruitment and participation of small businesses and women and minority owned enterprises in the State contracting process.

(3) All state agencies in the executive branch and all higher education agencies and institutions shall post all bids, requests for proposals and all resulting contracts and agreements on the State Contracting Portal and shall, with the assistance of the Department of Administrative Services and the Department of Information Technology as needed, develop the infrastructure and capability to electronically communicate with the State Contracting Portal.

(4) All state agencies in the executive branch and all higher education agencies and institutions shall develop written policies and procedures to ensure that information posted to the State Contracting Portal is done in a timely, complete and accurate manner consistent with the highest legal and ethical standards of state government.

(5) The Department of Administrative Services shall periodically report to the Office of the Governor on the progress of all state agencies in the executive branch and all higher education agencies and institutions in developing the capacity, infrastructure, policies and procedures to electronically communicate with the State Contracting Portal as well as the Department of Administrative Services' progress toward establishment and maintenance of the State Contracting Portal.

(6) This order shall be effective upon signing.

Dated at Hartford, Connecticut, this 15th day of December, 2004.

M. JODI RELL
Governor

STATE OF CONNECTICUT

BY HER EXCELLENCY

M. JODI RELL

GOVERNOR

EXECUTIVE ORDER NO. 7

WHEREAS, in the wake of the scandals related to state contracting, I established the State Contracting Reform Task Force to examine the way in which the state buys goods and services with a directive to restore integrity to, and the public's trust in, the way we buy such goods and services; and

WHEREAS, that task force submitted a number of recommendations that were embodied in a legislative proposal for the General Assembly's consideration;

WHEREAS, the General Assembly added to that legislative proposal provisions that do not address the irregularities in state contracting, but instead place unacceptable and overly burdensome limitations on the services for which the executive branch

may enter into contracts in order to conduct the business of the state and provide essential state services;

WHEREAS, in light of those provisions, I had no choice but to veto that legislation;

WHEREAS, there remains an acute need to make reforms in the state contracting process in order to ensure such contracting process reflects the highest standards of integrity, is clean and consistent and is conducted in the most efficient manner possible to enable state agencies to deliver programs and serve our citizens; and

WHEREAS, there further remains an acute need to address the state's vulnerabilities in the selection and procurement processes to avoid improprieties, favoritism, unfair practices or ethical lapses in the future, or the appearance of such.

NOW, THEREFORE, I, M. Jodi Rell, Governor of the State of Connecticut, acting by virtue of the authority vested in me by the Constitution and by the statutes of this state, do hereby **ORDER** and **DIRECT** that:

1. (a) There is established a State Contracting Standards Board that shall consist of five members appointed by the Governor. Each member shall have demonstrated sufficient knowledge by education, training or experience in several of the following enumerated areas: (1) Procurement; (2) contract negotiation, selection and drafting; (3) contract risk assessment; (4) requests for proposals and real estate transactions; (5) business insurance and bonding; (6) the code of ethics; (7) federal and state statutes, policies and regulations; (8) outsourcing and privatization proposal analysis; and (9) small and minority business enterprise development. Such education, training or experience shall have been acquired over not less than a continuous five-year period and shall have been acquired within the ten-year period preceding such appointment.

   (b) The chairperson of the board shall be appointed by the members of the board. The members shall serve at the pleasure of the Governor and their terms shall be coterminous with the terms of the Governor.

   (c) The State Contracting Standards Board shall be an independent body within the Executive Department.

   (d) The chairperson of the board shall be compensated two hundred dollars per diem. Other members of the board shall be compensated two hundred dollars per diem. No person shall serve on the board who holds another state or municipal governmental position and no person on the board nor any spouse, child, stepchild, parent or sibling of such person shall be directly or indirectly involved in any enterprise that does business with the state.

(e) The Governor shall appoint an executive director who shall serve as an ex-officio, nonvoting member of the board. The executive director may be removed from office for reasonable cause. The board shall, annually, conduct a performance evaluation of such executive director. The salary of the Executive Director shall be determined by the Commissioner of the Department of Administrative Services and the individual will be placed in the management pay plan and have benefits such as vacation, sick leave, pension and insurance determined in accordance with that designation. For all other purposes the Executive Director shall be considered an appointed official.

(f) The board may employ secretaries, real estate examiners, contract specialists, forensic fraud examiners, property and procurement specialists, paralegals, attorneys and such other employees as the board deems necessary, all of whom shall be in the state classified service. As the Board is not a state agency, the employees shall be considered to be employees of the Department of Administrative Services for administrative purposes.

(g) The reasonable expenses of the State Contracting Standards Board and its employees shall be paid from the budget of the board upon the approval of the board.

(h) No employee of the State Contracting Standards Board shall hold another state or municipal position, nor shall any such employee or any non-clerical employee or any spouse, child, stepchild, parent or sibling of such employee of the board be directly or indirectly involved in any enterprise that does business with the state. Each member and employee of the State Contracting Standards Board shall file, with the board and with the Citizen's Ethics Advisory Board, a financial statement indicating all sources of business income of such person in excess of one thousand dollars, and the name of any business with which such member or employee is associated, as defined in subsection (b) of section 1-79 of the general statutes. Such statement shall be a public record. Financial statements for the preceding calendar year shall be filed with the commission on or before April fifteenth of each year if such employee or member held such a position during the preceding calendar year.

(i) The board shall be assigned to the Department of Administrative Services for administrative purposes only.

(j) Three members of the board shall constitute a quorum which shall be required for the transaction of business by the board.

2. For the purposes of this order, the following definitions shall apply:

(a) "Procurement" means contracting for, buying, purchasing, renting, leasing or otherwise acquiring or disposing of, any supplies, services, including but not limited to, contracts for purchase of services and personal service agreements, interest in real property, or construction, and includes all government functions that relate to such activities, including best value selection and qualification based selection.

(b) "Emergency procurement" means procurement by a state agency that is made necessary by a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or requires immediate action to preserve prevent or mitigate the loss or impairment of life, health, property or essential public services or in response to a court order, settlement agreement or other similar legal judgment.

(c) "Best value selection" means a contract selection process in which the award of a contract is based on a combination of quality and cost considerations.

(d) "Qualification based selection" means a contract selection process in which the award of a contract is primarily based on an assessment of contractor qualifications and on the negotiation of a fair and reasonable price.

(e) "State contracting agency" means any state agency and all higher education agencies and institutions.

(f) "Contractor" means any person or entity bidding on, submitting a proposal for, applying for or participating as a subcontractor for, a transaction, procurement or contract described in this Order, including, but not limited to, a small contractor, minority business enterprise, organization providing products and services by persons with disabilities, as described in section 17b-656 of the general statutes, and an individual with a disability, as defined in section 4a-60g of the general statutes.

(g) "Contract risk assessment" means (A) the identification and evaluation of loss exposures and risks, including, but not limited to, business and legal risks associated with the contracting process and the contracted goods and services, and (B) the identification, evaluation and implementation of measures available to minimize potential loss exposures and risks.

(h) "Privatization contract" means an agreement or series of agreements between a state contracting agency and a person, in which such person agrees to provide services valued at five hundred

thousand dollars or more over the life of the contract that are substantially similar to and in lieu of services provided, in whole or in part, by employees of such agency or by employees of another state agency for such state agency and that results in the layoff, transfer or reassignment of any state employee. "Privatization contract" does not include the renewal, modification, extension or rebidding of a privatization agreement in effect on or before the effective date of this section, an agreement to provide management or financial consulting or a consultant-services agreement to provide professional architectural or design services on a project-by-project basis for only a period of time.

(i) "Purchase of service agreement" means any contract between a state agency and a nonprofit agency, partnership or corporation for the purchase by the state of ongoing and routine health and human services for clients of the Departments of Social Services, Children and Families, Mental Retardation, Mental Health and Addiction Services, Public Health and Correction which is overseen by the Office of Policy and Management.

(j) "Rebidding" means a state contracting agency's requesting of proposals or qualifications for a contract to provide goods or services that are specific to an existing facility or program provided such goods or services are being provided under a contract in effect as of July 1, 2005.

3. (a) On or before January 1, 2007, the State Contracting Standards Board shall prepare a uniform procurement code applicable to state contracting agency expenditures, including, but not limited to, expenditures: (1) By municipalities that receive state funds, (2) involving any state contracting and procurement processes, including, but not limited to, leasing and property transfers, purchasing or leasing of supplies, materials or equipment, as defined in section 4a-50 of the general statutes, consultant or consultant services, as defined in section 4b-55 of the general statutes, personal service agreements, as defined in section 4-212 of the general statutes, purchase of service agreements or privatization contracts, and (3) relating to contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building. Nothing in this section shall be construed to require the application of uniform procurement code procedures when such procurement involves the expenditure of federal assistance or contract funds and federal law provides applicable procurement procedures.

(b) The uniform procurement code described in subsection (a) of this section shall be designed to: (1) Establish uniform contracting

standards and practices among the various state contracting agencies; (2) simplify and clarify the state's laws governing contracting standards and the state’s procurement policies and practices, including, but not limited to, procedures for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements and special procurements; (3) ensure the fair and equitable treatment of all businesses and persons who deal with the procurement system of the state; (4) include a process to maximize the use of small contractors and minority business enterprises, as defined in section 4a-60g of the general statutes; (5) provide increased economy in state procurement activities and maximize purchasing value to the fullest extent possible; (6) ensure that the procurement of supplies, materials, equipment, services, real property and construction required by any state contracting agency is obtained in a cost-effective and responsive manner; (7) preserve and maintain the existing contracting, procurement, disqualification and termination authority and discretion of any state contracting agency when such contracting and procurement procedures represent best practices; (8) include a process to improve contractor and state contracting agency accountability; (9) include standards by which state contracting agencies must evaluate proposals to privatize state or quasi-public agency services and privatization contract bid proposals; (10) establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate; and (11) provide a process for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements, special procurements, best value selection, qualification based selection and the conditions for their use.

(c) In preparing the uniform procurement code described in subsection (a) of this section, the State Contracting Standards Board shall conduct a comprehensive review of existing state contracting and procurement laws, regulations and practices and shall utilize existing procurement procedures and guidelines that the board deems appropriate.

(d) Upon request by the State Contracting Standards Board, each state contracting agency engaged in procurement shall provide the board, in a timely manner, with such procurement information as the board deems necessary. The board shall have access to all information, files and records related to any state contracting agency in furtherance of this purpose. Nothing in this section shall be construed to require the board's disclosure of documents that are exempt from disclosure pursuant to chapter 14 of the general statutes or that may be protected from disclosure under claim of an attorney-client privilege.

(e) Such uniform procurement code shall be submitted to the General Assembly for its approval. The board shall file such code with the clerks of the House of Representatives and the Senate not later than January 15, 2007 for their consideration and adoption.

4. In addition to the preparation of the uniform procurement code described in section 3 of this Order, the duties of the State Contracting Standards Board shall include:

(a) Recommending the repeal of repetitive, conflicting or obsolete statutes concerning state procurement;

(b) Developing, publishing and maintaining the uniform procurement code for all state contracting agencies;

(c) Assisting state contracting agencies in complying with the code by providing guidance, models, advice and practical assistance to state contracting agency staff relating to: (A) Buying the best service at the best price, (B) properly selecting contractors, and (C) drafting contracts that achieve state goals and protect taxpayers' interest;

(d) Reviewing and certifying that a state contracting agency's procurement processes are in compliance with the code;

(e) Triennially, recertifying each state contracting agency's procurement processes and providing agencies with notice of any certification deficiency and exercising authority as provided under section 6 of this Order if a determination of noncompliance is made;

(f) Defining the training requirements for state contracting agency procurement professionals;

(g) Monitoring implementation of the state contracting portal and making recommendations for improvement to the Department of Administrative Services;

(h) Defining the contract data retention requirements for state agencies concerning retention of information on: (A) The number and type of state contracts currently in effect state-wide, (B) the dollar value of such contracts, (C) a list of client agencies, (D) a description of services purchased under such contracts, (E) contractor names, and (F) an evaluation of contractor performance, and assuring such information is available on the state contracting portal;

(i) Providing the Governor with recommendations concerning the uniform procurement code; and

(j) Approving an ethics training course for state employees involved in procurement and for state contractors. Such ethics training course may be developed and provided by the Citizen's Ethics Advisory Board or by any person, firm or corporation provided such course is approved by the State Contracting Standards Board.

(k) Developing of recommendations to the General Assembly whereby the powers, duties and obligations of the State Properties Review Board will be performed by the State Contracting Standards Board.

5. (a) The State Contracting Standards Board shall triennially conduct audits of state contracting agencies to ensure compliance with the uniform procurement code. In conducting such audit, the State Contracting Standards Board shall have access to all contracting and procurement records, may interview personnel responsible for contracting, contract negotiations or procurement and may enter into an agreement with the State Auditors of Public Accounts to effectuate such audit.

(b) Upon completion of any such audit, the State Contracting Standards Board shall prepare and issue a compliance report for such state contracting agency. Such report shall identify any process or procedure that is inconsistent with the uniform procurement code and indicate those corrective measures the board deems necessary to comply with code requirements. Such report shall be issued and delivered not later than thirty days after completion of such audit and shall be a public record.

6. Each contract entered into on or after October 1, 2005 shall contain a provision that, for cause, the State Contracting Standards Board may review and recommend termination of any contract or procurement agreement undertaken by any state contracting agency after providing fifteen days notice to the state contracting agency and the applicable contractor. Such action shall be accompanied by notice to the state contracting agency and any other affected party. For the purpose of this section, "for cause" means: (1) A violation of section 1-84, 1-86e or 4a-100 of the general statutes, as amended by this Order, or (2) wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency.

7. The Board shall establish recommendations on the procedure that agencies should utilize to disqualify a contractor from bidding on state contracts. Such recommendations shall provide the reasons for such disqualification which may include the following:

(a) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(c) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, a violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;

(d) Accumulation of two or more suspensions pursuant to section 8 of this order within a twenty-four-month period;

(e) A willful failure to perform in accordance with the terms of one or more contracts;

(f) A willful violation of a statutory or regulatory provision or requirement applicable to a contract;

(g) A willful or egregious violation of the ethical standards set forth in sections 1-84, 1-86e or 4a-100 of the general statutes or as set forth in this order; or

(h) Any other cause the board determines to be so serious and compelling as to affect responsibility as a state contractor, including, but not limited to: (A) Disqualification by another state for cause, (B) the fraudulent, criminal or seriously improper conduct of any officer, director, shareholder or employee of such contractor, provided such conduct occurred in connection with the individual's performance of duties for or on behalf of such contractor and such contractor knew or had reason to know of such conduct, or (C) the existence of an informal or formal business relationship with a contractor who has been disqualified from bidding on state contracts.

(i) Upon written request by the affected state contractor, the State Contracting Standards Board may reduce the period or extent of disqualification for a contractor if documentation supporting any of the following reasons for modification is provided to the board by the contractor:

(1) Newly discovered material evidence;

(2) Reversal of the conviction upon which the disqualification was based;

(3) Bona fide change in ownership or management; or

(4) Elimination of other causes for which the disqualification was imposed.

8. The Board shall establish recommendations on the procedure that agencies should utilize to suspend contractors from bidding on state contracts. Such recommendations shall provide the reasons for such suspension which may include the following:

(a) Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract;

(b) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;

(c) Any cause the state contracting agency determines to be so serious and compelling as to affect the responsibility of a state contractor, including suspension by another state contracting agency for cause; or

(d) A violation of the ethical standards set forth in sections 1-84, 1-86e and 4a-100 of the general statutes.

The state contracting agency may grant an exception permitting a suspended contractor to participate in a particular contract or subcontract upon a written determination by the commissioner of the state contracting agency that there is good cause for such exception and that such exception is in the best interest of the state.

9. The Governor hereby directs that all public meetings of state agencies shall be posted on that agency's website.

10. The Governor hereby prohibits appointed officials and state employees in the Executive Branch from contracting for goods and services, for personal use, with any person doing business with or seeking business with his or her agency, unless it is something that is readily available to the general public.

11. The Governor hereby directs that all contracts entered into on of after July 1, 2005 shall contain a requirement that the contractor disclose to the agency head any items of value provided to employees for which full payment has not been made.

12. The Governor hereby directs that no state agency may expend funds for any contract for legal services between the Attorney General and any person, firm or corporation that is entered into on or after January 1, 2006, and that will or that can reasonably be expected to result in attorney's fees, including, but not limited to, contingent fees paid to such person, firm or corporation in the amount of fifty thousand dollars or more, unless such contract has been subject to requests for proposals or requests for qualifications and awarded according to a competitive selection process.

This order shall be effective upon signing.

Dated at Hartford, Connecticut, this 30th day of June, 2005.

_____

M. JODI RELL
Governor

COMPLAINT REQUESTING FAST TRACK PROCESSING

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Richard Blumenthal, Attorney General for The State of Connecticut, the Connecticut Office of Consumer Counsel, the Connecticut Municipal Electric Energy Cooperative and the Connecticut Industrial Energy Consumers	:	Docket No.
v.	:	
ISO-New England, Inc.	:	

COMPLAINT REQUESTING FAST TRACK PROCESSING AND FOR ORDER TO AMEND **ISO-NEW ENGLAND'S** MARKET RULE 1 WITH REGARD TO THE COMPENSATION OF ELECTRIC GENERATION FACILITIES IN CONNECTICUT BY RICHARD BLUMENTHAL, ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT, THE CONNECTICUT OFFICE OF CONSUMER COUNSEL, THE CONNECTICUT MUNICIPAL ELECTRIC ENERGY COOPERATIVE AND THE CONNECTICUT INDUSTRIAL ENERGY CONSUMERS

Pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 and 385.212, Richard Blumenthal, Attorney General for the State of Connecticut ("CTAG"), the Connecticut Office of Consumer Counsel ("CT OCC"), the Connecticut Municipal Electric Energy Cooperative ("CMEEC") and the Connecticut Industrial Energy Consumers ("CIEC") (collectively, the "Connecticut Representatives") hereby submit this Complaint and Request for Order to amend the ISO New England Inc.'s ("ISO-NE") Market Rule 1 with regard to the compensation of electric generation facilities in Connecticut, subject to specific remedial conditions detailed further below in this Complaint. Specifically, the Connecticut Representatives seek to amend Market Rule 1, Appendix A, § III.A.6 and Appendix A, Exhibit 2, § 3.2. to ensure that all electric generation facilities that

have been designated as an RMR Resource or are otherwise determined by ISO-NE as necessary for reliability in Connecticut must apply to ISO-NE for cost-of-service compensation. This measure will save Connecticut's electricity customers nearly $1 billion over the next twelve months.

The Connecticut Representatives further request that the Federal Energy Regulatory Commission ("FERC" or "Commission") conduct an expedited fast track proceeding in this matter. Collectively, the Connecticut Representatives have responsibility for protecting the interests of all the electric consumers in the State of Connecticut.

I. SUMMARY OF ARGUMENT

Pursuant to the Federal Power Act ("FPA"), the Commission is responsible to ensure that rates for electricity are just and reasonable. This statutory mandate is essential in order to protect electric consumers from the exercise of monopoly or market power by producers of electricity. The aggregate effect of the Commission's current regulatory policies in Connecticut, however, has moved the Commission to the point where it is now violating the Federal Power Act by ensuring that electric consumers in Connecticut are paying the higher of either cost of service or market-based rates for electricity – a pricing system that guarantees rates that are unjust and unreasonable.

Very simply, the Commission has authorized every generator in Connecticut to receive revenue based on whatever the market will bear pursuant to their market-based rate authority or to opt out of the "market" based system and recover all of their fixed and variable costs as well as earn a guaranteed rate of return pursuant to Reliability Must-Run ("RMR") contracts. As a result, high-cost generators have generally opted out of the "market" in favor of RMR coverage in order to receive cost-of-service compensation far

above what they would receive in a competitive region-wide market, while lower variable cost generating units have opted to continue to operate as if there were an open, competitive market, charging whatever the market will bear and collecting profits far in excess of their cost of service and what they would receive in a regulated market. Still other units are allowed to continue submitting energy bids that far exceed what would be expected in a truly competitive market under the Peaking-Unit Safe Harbor ("PUSH") bidding mechanism. Such resources have the opportunity to increase congestion costs in the constrained region and to collect uplift charges for out of merit operation when they are needed for local area reliability even though other less expensive alternatives are available in the region-wide energy market. In fact, the Commission has even allowed some generation owners to elect to place certain of their units under RMR coverage and keep others in the "market," even though they are owned by the same corporate entity, resulting in both regulated and unregulated generating plants operating side-by-side, one under cost-of-service regulation and one in a make-believe competitive market.

Taken as a whole, the Commission has implemented rate policies that are "lose-lose" for consumers and "win-win" for generators, in violation of the FPA. Consumers are forced to pay the most that can possibly be paid to those generators choosing a "regulated" pricing system and the most that can possibly be paid to generators choosing a "market" pricing system - all in violation of the Commission's fundamental mission and purpose to protect consumers from unjust and unreasonable rates.

As a result of the current failed market regime, over the last twelve months Connecticut consumers have paid more than $445 million more to those plants that have chosen to remain in the make-believe "competitive" market than they would have paid had

those plants been operating under cost-of-service operation. Moreover, the dramatic increase in forward market prices for round-the-clock power in 2006 indicates that customers will overpay these plants by $970 million in the next twelve months. These additional costs are an unacceptable burden upon Connecticut's citizens and businesses. The Commission should therefore grant the relief requested in this petition, which will save Connecticut's electricity consumers nearly $1 billion over the next year alone.

In meeting its statutory obligations to ensure that rates for the purchase and sale of electricity are just and reasonable, the Commission may rely upon traditional cost-of-service regulation or, in the alternative, a regime of market-based rates, provided the structure of the market is first found to be competitive. Under either system, standing alone, consumers would be poised to receive either the cost/benefit of competition among all generators or the regulated benefit of cost of service pricing for both high and low cost generators. Under the present system existing in Connecticut, consumers receive neither set of benefits.

The Commission may rely upon a market-based rates regime only when certain important predicate conditions exist. Specifically, the Commission must first make an affirmative finding based upon empirical evidence that competition in electric markets is delivering customer benefits in the form of just and reasonable rates before market-based rate authority can be used as a regulatory tool to achieve the FPA's objectives. The Commission therefore has a continuing obligation to monitor market structure and market performance to ensure that it remains workably competitive and that rates produced thereunder are just and reasonable and that a market-based rate regime remains appropriate.

Subsequent to the Commission's adoption of competitive market structures for the wholesale electric generation market in New England, including the Commission's approval

of Market Rule 1 as the foundation for a regional Standard Market Design ("SMD"), a number of developments have made clear that competition does not currently exist and likely cannot exist in Connecticut until new transmission is constructed to increase transfer capability into Connecticut generally and into certain Connecticut sub-regions specifically. In Connecticut, ISO-NE has declared that all existing generation is needed for reliability and is therefore eligible for RMR contracts, essentially allowing any unit to choose cost-of-service compensation and a guaranteed rate of return on equity of approximately 10.88%.[12] As a result of this determination, all generation owners in Connecticut now have the ability to choose between compensation based upon the "higher of" market-based rates or cost-based rates, with the obvious end result that generators, particularly high cost generators, will opt out of the "competitive" market and refuse to exist solely on market-based revenue if they can obtain greater guaranteed profitability through regulated cost of service rates. Moreover, as described in more detail below, ISO-NE has expressly stated that it has no obligation to determine the cost-effectiveness (from a customer's standpoint) of any individual RMR contract vis-à-vis a unit's continued reliance on market-based revenue streams.

In response to ISO-NE's determination that all generators in Connecticut are eligible for cost-of-service RMR agreements, more than 40% of Connecticut's total generation

[1] *See*, ISO-NE, *Technical Assessment of the Generating Resources Required to Reliably Operate Connecticut's Bulk Electric System 2003 and 2006*, January 29, 2003. ("CT Generation Report") (regarding "needed for reliability" finding); ISO-NE, *CT & SWCT Need for Resources for RFP 2004 – 2008*, November 13, 2003 ("RFP Presentation") (same), and *ISO New England RTEP04 Technical Report*" November 2004 ("RTEP04 Report") (same); *See also*, *Devon Power Company*, 104 FERC ¶61,123 (2003) at PP. 48-49 (regarding 10.88% ROE); *Milford Power Company LLC*, 110 FERC ¶61,299 (2005) at P. 72 (same); .

[2] The Connecticut Representatives are not in this proceeding contesting the ISO-NE's determination that Connecticut is a reliability zone or that all generation is needed for reliability. The Connecticut representatives further are not in this proceeding contesting the appropriateness of a market-based rates regime operating within a competitive market or the Commission's approval of market-based rate authority for any particular unit. Rather, the specific structural circumstances present in Connecticut and the mass proliferation of RMR contracts have rendered the application of Market Rule 1 to Connecticut unjust and unreasonable.

capacity has filed RMR agreements for the Commission's approval, currently representing more than $298 million a year in fixed costs that are being paid by ratepayers.[3] The vast majority of the remaining generation units in Connecticut are operating under FERC's PUSH bidding regime or are units that have fully contracted the output of their facilities.

Only four generation facilities in Connecticut are deriving their revenue streams from ISO-coordinated markets. *See* Attachments 1-1, 1-2. These four units, representing about 30% of the generating capacity in Connecticut with an energy output that reflects about 55% of Connecticut's annual energy requirements, are low variable cost baseload nuclear and coal-fired units that are being compensated far in excess of what they would otherwise receive through cost of service pricing.[4] This is because under ISO-NE's market design, market clearing prices, which are the basis for compensation of all supply resources delivering power through the ISO-NE settlement system, reflect the price of the most expensive unit needed to meet load and reserve requirements. These are primarily the high cost oil and natural gas generating facilities. Even though the baseload nuclear and coal-fired generators do not use high cost oil or natural gas, under the settlement procedures of Market Rule 1 these units are compensated as if they use that high cost fuel, artificially inflating the price for their power.

---

[3] *See* ISO-NE summary report of RMR costs (available at www.iso-ne.com/genrtion_resrcs/reports/rmr/rmr_agreements_summary_with_fixed_costs.xls) (last visited on Sept. 6, 2005). Following March 1, 2003 (with the adoption of SMD in New England), the costs of RMR contracts are allocated on a "network load" basis to the zone in which the generator with a RMR contract is located. Thus, the burden of $328 million in annual fixed costs from RMR contracts covering generating units in Connecticut is allocated to ratepayers in Connecticut. Because the "needed for reliability" predicate to the granting of RMR contracts are premised on Connecticut-wide operating requirements, the Connecticut Representatives propose that the additional fixed cost payment obligation (and offsetting inframarginal revenues) as proposed herein should be allocated Connecticut-wide on a network load basis.

[4] Specifically included in this category of generating units are the Millstone 2 and 3 nuclear-fired units and the Bridgeport Harbor 3, coal-fired unit. The aggregate generating capacity of these three units is approximately 2400 MW. The fourth, Norwich Jet, a small peaking unit owned by the City of Norwich Department of Public Utilities, also remains in the market but is not a subject of analysis in this complaint.

Moreover, aside from the unjust and unreasonable rate impact on consumers created by the make-believe "competitive" market, generation owners have taken these failed pricing policies to a higher level. In certain circumstances, generation owners have established limited liability corporations for each of their units, shielding themselves from fleet-wide determinations of revenue adequacy and forcing customers into paying the highest cost possible for each and every unit, ensuring that their high cost units receive a high guaranteed cost-of-service rate of return and their low cost units receive the excessive profits currently obtainable from the settlement procedures under Market Rule 1. The Commission has itself exacerbated this problem by recently authorizing unit-by-unit analysis of revenue adequacy. *PSEG Power Connecticut LLC*, 110 FERC ¶ 61,020 (2005) at P 33. As a result, the same company or ultimate parent company that may be earning excessive infra-marginal revenue through its baseload and high capacity factor intermediate units may, at the same time, be receiving guaranteed profits for its peaking units based upon cost-of-service RMR agreements. Additionally, those higher variable cost generating units that have not opted for RMR guaranteed profits are located in non-competitive load pockets and, utilizing their strategic locations, are also able to garner supra-competitive profits through the PUSH bidding mechanism.[5]

Application of this flawed patchwork of market and regulation design produces a pricing framework that is incapable of delivering just and reasonable rates to Connecticut ratepayers. Market participants can now leverage their cost recovery to the highest level allowed under either the regulated or un-regulated regime, and Connecticut's electric consumers are paying rates that violate the Federal Power Act, in that they are higher than

[5] The Norwalk Harbor 1 and 2 generating units, owned by NRG Energy, Inc., comprising 333 MW of capacity fit within this category.

they would be under either a comprehensive cost-of-service regime or a workably competitive market-based regime.

With respect to the half of the market that has re-regulated with cost-of-service RMR contracts, generation owners now have the ability to set a floor, or minimum level of guaranteed profit, for each of their units. This has shifted the risk of any losses associated with investment away from investors to customers, directly contrary to a fundamental function and essential characteristic of a competitive market. This is direct evidence of market failure, and violates the FPA's requirement that rates be just and reasonable.

With respect to the half of the market that remains in the make-believe "competitive market," those generators are being overcompensated with supra-competitive rates of return because a competitive market simply does not exist. Based on estimates derived from publicly available information, these supra-competitive returns are more than $445 million a year, or approximately equal to one and a half times the RMR fixed charges currently paid by ratepayers.[6] Connecticut consumers are being forced to pay twice – once for RMR charges to units that threaten to shut down if not paid fixed cost recovery and twice for excess returns to those generators opting to stay in a market, now fundamentally distorted and fatally flawed by the proliferation of RMR contracts. These supra-competitive rates of return are further evidence that prices are well above marginal cost and the market has failed.

The Commission currently has pending before it a proposal that would provide for the payment of locational installed capacity ("LICAP") to electric

[6] As further discussed below, the $445 million per year in supra-competitive is a low estimate based on the prior year's average price for wholesale energy (which was approximately $62/MWh). Current forward prices for round-the-clock power in 2006 in New England are approximately $90/MWh. Forward prices are today's best estimate of prevailing prices for the period to which the forward price is applicable. Assuming that the generators remaining in the market earn revenues at this level, the level of over-compensation escalates to approximately $970 million (or about 25% of the current annual cost of electricity at retail in Connecticut).

generators throughout New England, with a proposed effective date of January 1, 2006. *Devon Power LLC, et al.*, Docket ER03-563.[7] This proposed effective date has recently been pushed back to October 1, 2006 at the earliest. *Devon Power LLC et al.*, 112 FERC ¶61,179 (Aug. 10, 2005). Even if approved under the extended schedule now approved by FERC, however, LICAP will not cure the fundamental flaws in, and illegality of, the wholesale electric "market" framework in Connecticut because neither the LICAP proposal nor any Commission order to date on that proposal has precluded the continuing use of, or form of, RMR contracts for generators deemed "needed" for reliability once LICAP goes into effect. Indeed, it is the other way around. While all but one of the current crop of RMR agreements are to terminate on the LICAP implementation date, FERC has not stated that RMR arrangements will no longer be approved and should not be pursued once the LICAP regimen goes into effect. Rather than require that LICAP be a substitute or replacement for RMR agreements, in setting the ISO's proposed LICAP mechanism for hearing the Commission stated that it had "directed revisions to NEPOOL Market Rule 1 to lessen the need for RMR agreements."[8]

Similarly, the ISO testimony in the LICAP proceeding is clear on the point that RMR agreements will not disappear if LICAP is implemented. Witness David LaPlante stated in his direct

[7] The CT Representatives oppose LICAP and nothing stated herein should be construed as support for LICAP or to indicate the ultimate outcome of that proceeding.

[8] Devon Power LLC, et al., 107 FERC ¶ 61,240 at P 7 (June 2, 2004), emphasis added.

testimony that while a "key objective" of the LICAP proposals has been to "replace" RMR agreements,[9] "because capacity markets do not address all operational considerations, RMR ("RMR") agreements may still be needed in limited situations to solve specific operating problems."[10] Mr. LaPlante goes on to assert that the ISO's LICAP proposal "also meets the Commission's objective of replacing most RMR contracts with locationally appropriate market prices."[11]

Thus, to the extent LICAP payments, if ultimately approved, are less than those derived from RMR coverage, electric generators will continue to seek RMR contract coverage. If the Commission continues to approve the use of RMR arrangements following an adoption of LICAP, then generators operating in "competitive" markets will have a right to recovery that is wholly inconsistent with the premise of competition: namely, that markets are designed such that competitors have no more than the **opportunity** (and **not** a guarantee, as is provided by a RMR agreement) of recovering their costs plus a reasonable rate of return.[12]

---

[9] Direct Testimony of David LaPlante, Docket No. ER03-563-030, Exhibit No. ISO-1, Summary.

[10] *Id.* at 7-8.

[11] *Id.* at 23 (emphasis added).

[12] For example, the Commission has explained that the PUSH bid regimen "is intended to permit selected high cost but seldom run units in Designated Congestion Areas (DCAs) to have an opportunity to recover their fixed and variable costs through market bids." 104 FERC ¶ 61,123 at P 2 (emphasis added); *see id.* at P 6 (the PUSH bidding rules "permit selected peaking units ... operating within DCAs [Designated Congestion Areas] to raise their bids so as to allow them the opportunity to recover their fixed and variable costs through the market").

There is no indication that LICAP would allow the ISO to reconsider its determination that all units in Connecticut are needed for reliability and would not alleviate, at least in the near-term, the structural conditions that make application of the current version of Market Rule 1 to Connecticut unjust and unreasonable. Because LICAP would result in the layering of additional revenues on all units, it will do nothing to eliminate the current situation where certain units receive substantial infra-marginal revenues, certain units receive revenue that is close to their revenue requirements, and all other units receive "prop-up" payments because they are deemed necessary for reliability.

Finally, ISO-NE's independent market monitor has recently suggested that the market structure of wholesale power in Connecticut is insufficiently competitive. In its recent assessment of the New England markets, New England's independent market monitor indicated that, even if RMR contracts were to be replaced by LICAP, the removal of limitations on energy bidding by generators no longer subject to RMR, but rather operating under a LICAP regime, would give rise to a "significant concern" about the undue exercise of market power within Connecticut. [13] Thus, the possible pending advent of LICAP does not cure the fundamental infirmity of the prevailing market regime; both because it does not preclude the untenable "higher of" option for generators currently available to generators and

[13] RMR contracts typically limit a generator's bids into the energy market to a fuel-index adjusted measure of its variable costs, whereas generators not subject to RMR are free to bid unilaterally into the market, subject only to ISO-NE's market power mitigation procedures (which are partially suspended under the PUSH bidding regime implemented with RMR contracts). ISO-NE's independent market monitor has recently reported that, given the infirmities in market structure of Connecticut generation, removal of RMR contracts and the consequent change in bidding discretion could create severe market power problems. David Patton et al., *2004 Assessment of the Electricity Markets in New England* (June 2005), p. xvi ("The analysis suggests that once the RMR agreements expire, market power will be a significant concern within Connecticut as well"). This further underscores the "make believe" nature of the so-called "competitive" electric market in Connecticut.

because it does not resolve the underlying lack of a competitive market structure for generation in Connecticut.

The Commission must therefore amend Market Rule 1 to revise the settlement and compensation procedures for electric generation facilities within the Connecticut reliability zone. Specifically, the Connecticut Representatives propose that the Commission amend Market Rule 1, Appendix A, § III.A.6 and Appendix A, Exhibit 2, § 3.2. to ensure that all electric generation facilities that have been designated as an RMR Resource or are otherwise determined by ISO-NE as necessary for reliability in Connecticut must apply to ISO-NE for cost-of-service compensation.[14]

The Connecticut Representatives suggest the following amendments to Market Rule 1, Appendix A, Exhibit 2, § 3.2. could form an appropriate remedy

> *Procedure For Negotiation Of RMR Agreements.* ISO-NE shall, on an annual basis (beginning on October 1, 2005 and on or before October 1 of each subsequent year), conduct a unit by unit analysis of all electric generation facilities in Connecticut to determine whether such generation facilities are necessary for reliability.
>
> Entities designated as an RMR Resource [whereby their fixed costs are paid under RMR contracts] pursuant to Section III.A.6 of ***Appendix A*** ~~may~~ [or are otherwise determined by ISO-NE as necessary for reliability in Connecticut shall] apply to the ISO for such an agreement (an "RMR Agreement"). For purposes of this procedure, the Market Participant with the

[14] As noted above, ISO-NE has already determined that all Connecticut electric generation facilities are needed for reliability.

authority to submit Supply Offers for such Resource shall be called the "RMR Seller."

The RMR agreement described herein should also be subject to the following specific remedial conditions:

(a) All electric generators in Connecticut[15] currently operating under market-based rate authority[16] would be paid their annual fixed costs on a ratable basis, where all capital recovery incorporated in the fixed costs payment is based on the lower of: (i) actual, prudently incurred cost (as documented under the Commission's Uniform System of Accounts, and, where applicable for facilities previously subject to cost of service recovery, as documented in the last accounting record prepared of such costs prior to removal from regulated rate base); or (ii) acquisition cost.

(b) All such electric generators would be authorized to bid up to their variable cost in the day ahead market ("DAM") and real time market ("RTM") and must credit any infra-marginal revenues from bidding their output of any product into the electric markets administered by ISO-NE or other bilateral contract revenues associated with or related to the unit against the fixed

[15] The Connecticut Representatives seek to have the remedies described herein apply to electric generation facilities in Connecticut only. The Connecticut Representatives take no position on the application of these changes to generators operating in reliability zones elsewhere in New England and have made no detailed analysis of the market conditions present in those reliability zones.

[16] The Connecticut Representatives do not seek to disturb or modify any existing contracts that electric generation facilities may have regarding any portion of their output or ancillary services. To the extent certain generators have contracted all or a portion of their supply to third parties, those contracts would remain undisturbed, subject to those revenues being credited against the generator's fixed cost recovery detailed in sub-section (b).

cost recovery identified in (a) above.[17] "Infra-marginal revenues" would be measured by the difference between the revenues paid to the generating unit by ISO-NE, or the bilateral contracting party as applicable, in excess of the variable cost of operation of the particular generating unit.

The amendments to Market Rule 1 would require that all electric generation facilities in Connecticut currently bidding their output in the DAM and RTM would henceforth be compensated on a cost-of-service basis until the Commission is able to make and support affirmative findings that re-introduction of market-based revenue streams is consistent with the just and reasonable standards of the Federal Power Act. These findings would need to include determinations that electricity markets in Connecticut are truly competitive as well as affirmative findings that the predicates necessary for competition are actually in place (e.g., transparent information, no/minimum barriers to entry, no delivery costs), that prices reflect marginal costs, that sellers would have a reasonable opportunity to receive only a proper return on investment and that consumers are only charged rates that are just and reasonable. The Commission should open a proceeding within one year of the completion of the currently scheduled transmission projects in Connecticut to review the market structure in Connecticut and to determine whether market-based compensation is capable of being squared with the Federal Power Act.

II. COMMUNICATIONS

All correspondence and communications to the CTAG in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:

[17] The Connecticut Representatives do not propose to limit the Commission's consideration of appropriate cost-of-service designs.

Richard Blumenthal
Attorney General
55 Elm Street
Hartford, CT 06106-1774
Tel: (860) 808-5318
Fax: (860) 808-5387

Michael C. Wertheimer
John S. Wright
Assistant Attorneys General
10 Franklin Square
New Britain, CT 06051
Tel: (860) 827-2620
Fax: (860) 827-2893

All correspondence and communications to the OCC in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:

Joseph A. Rosenthal
Office of the Consumer Counsel
Ten Franklin Square
New Britain, Connecticut 06051
Tel: (860) 827-2900
Fax: (860) 827-2929

Mary J. Healey
Consumer Counsel
Ten Franklin Square
New Britain, Connecticut 06051
Tel: (860) 827-2900
Fax (860) 827-2929

All correspondence and communications to the CMEEC in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:

Philip L. Sussler
Brian Forshaw
Connecticut Municipal
Electric Energy Cooperative
30 Stott Avenue
Norwich, CT 06360
Tel: (860) 889-4088
Fax: (860) 889-8158

Scott H. Strauss
Spiegel & McDiarmid
1333 New Hampshire Avenue, NW
Washington, DC 20036
Tel: (202) 879-4035
Fax: (202) 393-2866

All correspondence and communications to the CIEC in this docket should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary in connection with these proceedings:

Barbara S. Brenner
Robert M. Loughney
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, NY 12201
Tel: (518) 426-4600
Fax: (518) 426-0376

III. THE PROLIFERATION OF RELIABILITY MUST RUN AGREEMENTS AND FINDINGS THAT ALL GENERATORS ARE MUST-RUN FOR RELIABILITY RENDERS APPLICATION OF MARKET RULE 1 TO CONNECTICUT UNJUST AND UNREASONABLE

A. The FPA Requires That Rates Be Just and Reasonable

The FPA provides the Commission with the authority to regulate the purchases and sales of electric power at wholesale in interstate commerce and the interstate transmission of electric power. The Commission is charged to ensure that the ratemaking process does not

"produce arbitrary or unreasonable consequences." *Permian Basin Area Rate Cases*, 390 U.S. 747, 800 (1968). The FPA is primarily a consumer protection statute. *See Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944) ("primary aim of this legislation was to protect consumers against exploitation"). Under the FPA, public utilities must charge rates and engage in practices that are just, reasonable and not unduly discriminatory.[18] 16 U.S.C. §§ 824d and 824e. The FPA requires just and reasonable rates in order to "afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." *Atlantic Refining Co. v. Public Serv. Comm'n*, 360 U.S. 378, 388 (1959). In the application of its authority to ensure that rates are just and reasonable, "the Commission must be able to demonstrate that it has 'made a reasoned decision based upon substantial evidence in the record'." *Tennessee Gas Pipeling Co. v. FERC*, 400 F.3d 23, 25 (D.C. Cir. 2005), *quoting Northern States Power Co. (Minnesota) v. FERC*, 30 F.3d 177, 180 (D.C. Cir. 1994).

In enforcing this mandate, FERC can exercise some flexibility in setting rates, but the end result must be that rates remain within a "zone" that is just and reasonable.[19] Just and reasonable rates strike a "fair balance between the financial interests of the regulated company and 'the relevant public interests, both existing and foreseeable'." *Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984). While rates cannot be so low as to be confiscatory, the primary purpose of rate setting is to protect consumers against

[18] *See, Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944); *Atlantic Refining Co. v. Public Utility Commission of the State of New York*, 360 U.S. 378 (1959) ("*Atlantic Refining*").

[19] *See, e.g., Alabama Electric Cooperative v. FERC*, 684 F. 2d 20, 27 (D.C. Cir. 1982).

excessive rates.[20] Rates that fall outside the resulting "zone of reasonableness" are illegal and the Commission is obliged, on its own initiative if necessary, to take corrective action.

The just and reasonable standard was instituted to address the complete market break-down resulting from the unfettered exercise of market power in the context of the electric utility industry. *See e.g. Gulf States Utilities Co. v. Federal Power Commission* , 411 U.S. 747, 758 (1973); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). It was generally recognized that rates resulting from the exercise of market power are injurious to consumers and to the economy. Rates that reflect the exercise of market power, and therefore allow for the collection of monopoly rents, are *per se* outside the permissible zone of reasonableness.

B. The Commission May Rely Upon Market-Based Rates Only if it Has <u>Determined That Market Structures Are Workably Competitive</u>

Since the passage of the FPA, two methods of regulation have evolved, the "traditional" cost-of-service regulation of rates and, more recently, a system of "market-based" rates. In either regime, the resulting rates must be "just and reasonable."

With respect to market-based rates, the FERC may not defer to the market when the prevailing market structure allows for the exercise of undue market power because such a market cannot be relied on to fulfill the statutory mandate that rates be just and reasonable. Courts have uniformly held that the Commission has an affirmative obligation to approve market-based rates and tariffs only where the Commission has made specific findings that markets are workably competitive.

> The use of market-based tariffs was first approved in the natural gas context, *see Elizabethtown Gas Co. v. FERC*, 304 U.S. App. D.C. 91, 10 F.3d 866, 870 (D.C. Cir. 1993), then as to wholesale sellers of electricity, *see Louisiana*

[20] *Pennsylvania Water & Power Co. v. Federal Power Commission*, 343 U.S. 414, 418 (1952); *Sierra Pacific*, 350 U.S. at 355; *Atlantic Refining*, 360 U.S. at 388.

> *Energy and Power Authority v. FERC*, 329 U.S. App. D.C. 401, 141 F.3d 364, 365 (D.C. Cir. 1998). However, approval of such tariffs was conditioned on the existence of a competitive market. *Id.* Thus, market-based applications were approved only if FERC made a finding that "the seller and its affiliates [did] not have, or adequately [had] mitigated, market power." *Id.* The principle justifying this approach as "just and reasonable" was that "in a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that the price is close to marginal cost, such that the seller makes only a normal return on its investment." *Tejas Power Corp. v. FERC,* 285 U.S. App. D.C. 239, 908 F.2d 998, 1004 (D.C. Cir. 1990).

Cal. ex rel. Lockyer v. FERC, 383 F.3d 1006, 1012-13 (9th Cir. 2004) (footnotes omitted).

Similarly, in *Farmers Union Central Exchange v. FERC,* 734 F. 2d 1486 (D.C. Cir. 1984), *cert. den. sub nom., Williams Pipe Line Co. v. Farmers Union Cent. Exch. Inc.*, 469 U.S. 1034 (1984) ("*Farmers Union*"), the court considered the permissible context for the charging of market-based rates. In that case, FERC presumed that if it simply established ceiling prices, albeit at very high levels, "market forces could be relied upon to keep prices at reasonable levels throughout the oil pipeline industry." Id. at 1510. The court rejected this reasoning, stating that:

> [w]ithout empirical proof that it would, this regulatory scheme, however, runs counter to the basic assumption of statutory regulation, that "Congress rejected the identity between the 'true' and the 'actual' market price." *FPC v. Texaco*, 417 U.S. at 399. In fact, FERC's "'regulation' by such novel 'standards' is worse than an *exemption simpliciter*. Such an approach retains the false illusion that a government agency is keeping watch over rates, pursuant to the statute's mandate, when it is in fact doing no such thing." *Texaco v. FPC*, 474 F.2d. at 422.

Id.; see also Tejas Power Corp. v. FERC, 908 F. 2d 998, 1005 (D.C. Cir. 1990).

Subsequent court cases emphasize that market-based rate authority (such as that currently exercised by generators in New England within the market structure promulgated by ISO-NE) should only be exercised where the market structure is found to be "workably

competitive." *See, e.g., Elizabethtown Gas Company v. FERC*, 10 F. 3d 866, 871 (D.C. Cir. 1993). The mandate that a market be workably competitive is an ongoing requirement that must continually be met in order to justify the continued grant of market-based rate authority to generators participating in the DAM and RTM. Reliance upon market-based rate authority requires a "showing that…markets are so structured that they have adequate incentives to keep costs down . . . ." *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1006 (D.C. Cir. 1990). Indeed, only "where there is a competitive market" may the Commission "rely on market-based rates in lieu of cost-of-service regulation to ensure that rates satisfy" the just and reasonable requirement. *La. Elec. & Power Author. v. FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998); *see also California v. FERC*, 383 F.3d 1006, 1012 (9th Cir. 2004) (observing that approval of market-based rate tariffs "was conditioned on the existence of a competitive market."). The Commission may rely on market-based rate authority only where the Commission finds "empirical proof" that competitive markets can exist and "ensure that the actual price is just and reasonable." *Farmers Union*, 734 F. 2d at 1510; *see also El Paso Natural Gas Co.*, 56 FERC ¶ 61,290 at p. 61,179 (1991) (concluding that "empirical evidence" supported a finding that El Paso could not exercise market power).

C. Market-Based Revenue Streams in New England

In its Order Conditionally Accepting Market Rules and Conditionally Approving Market-Based Rates issued in *New England Power Pool*, 85 FERC ¶ 61,379 (1998) (the "1998 FERC Orders"), the Commission approved the creation of ISO-NE and a new market-based rate structure whereby generating companies, operating under "market-based rate authority" granted by the Commission, could unilaterally bid the supply of energy and other products into a regional wholesale market. In granting approval for this market-based rate

structure in the 1998 Orders, and subsequently in the Commission's Order approving ISO-NE's SMD issued on September 20, 2002 and upheld on rehearing on December 20, 2002 (collectively, the "2002 FERC Orders") 100 FERC ¶ 61,287 (2002), *order on rehearing*, 101 FERC ¶ 61,344 (2002) ("December 20 Order"),[21] FERC made clear that it did so because it believed that the resulting market forced generators to compete against each other across the entire New England region in a single spot market (in the 1998 FERC Orders) and in a market with locationally determined prices (in the 2002 FERC Orders) that was generally "workably competitive." 101 FERC ¶ 61,344 (2002) December 20 Order, ¶¶ 19-22, 25-28. As such, the Commission believed that the market could lawfully function as a substitute for the prior cost-of-service regulation of electric generation established in conformity with FERC's obligation to assure that wholesale rates for electric power are set at no more than "just and reasonable" levels, as required by the FPA. 16 U.S.C. § 824d(a).

D. Forty Percent of Connecticut's Generation Capacity Has Either Been Approved For or Is Seeking RMR Cost-of -Service Treatment

Subsequent to the initial orders establishing market-based rate wholesale electric markets in New England, ISO-NE determined that all generation facilities in Connecticut are necessary for system reliability.[22] In making this determination, ISO-NE confirmed the

[21] The CTAG opposed the implementation of ISO-NE's SMD. The CTAG specifically criticized ISO-NE's reliance upon RMR contracts. The CTAG argued that constraints in the transmission grid coupled with concentration of ownership of generation in the area affected by the constraint can create circumstances where a broad, liquid regional market with multiple competing generators ceases to function efficiently. The CTAG further argued that, given these constraints on transmission and new capacity, the localization of RMR costs would reward the existence and exercise of market power and undermine the development of competitive markets. December 20 Order, ¶ 29.

[22] Generators qualify for RMR coverage under ISO-NE's market rules if determined to be "needed for reliability." ISO-NE has previously determined that all electric generation in Connecticut so qualifies. *See*, ISO-NE, *Technical Assessment of the Generating Resources Required to Reliably Operate Connecticut's Bulk Electric System 2003 and 2006*, January 29, 2003. ("CT Generation Report"); ISO-NE, *CT & SWCT Need for Resources for RFP 2004 – 2008*, November 13, 2003 ("RFP Presentation"), and *ISO New England RTEP04 Technical Report*" November 2004 ("RTEP04 Report").

transmission-constrained nature of the wholesale market for electricity in southwest Connecticut, previously adverted to by the Commission,[23] and generally throughout the entire state.[24] Connecticut's loads almost always exceed the transfer capacity of the transmission grid connecting the State to the rest of the control area. As a result, in-area, local generation is the only source of supply for incremental changes in the State's electric load during peak periods and to provide operating reserves to maintain system security in response to operating contingencies – effectively segmenting Connecticut's electric generation from the larger New England wholesale electric market.

Under Market Rule 1, once a generation facility is determined to be needed for reliability, the facility becomes eligible to seek cost-of-service compensation under RMR agreements. In response to ISO-NE's determination with respect to Connecticut generation, more than 40% of Connecticut's generation capacity has petitioned the Commission for approval of RMR contracts negotiated with ISO-NE. The Commission has approved RMR contracts for: (1) NRG Energy's units at Devon Station (units 11-14),[25] Middletown (units 2-4, 10), and Montville (units 5, 6, 10, 11), representing a total of 1370 MW;[26] (2) Milford

[23] *Wisvest-Connecticut LLC et al*., 96 FERC ¶ 61,101 (July 25, 2001) ("[A]ll parties agree that SWCT [southwest Connecticut] and CT [Connecticut] are sufficiently transmission-constrained to be considered load pockets for a substantial portion of the time")("[D]uring periods when transmission becomes so constrained such that no additional imports from outside the region are possible and generators located inside the region are the only suppliers that can sell insider the region (i.e., the region is a load pocket), the region should be defined as a separate relevant geographic market. Such is the case with SWCT and CT in this proceeding.").

[24] Connecticut's peak load in 2004 was projected to be 6765 MW. Connecticut Siting Council, *Review of the Connecticut Electric Utilities' Ten Year Forecasts of Load and Resources* (2004), at 4. Generation capacity electrically located within the State is approximately 6900MW and transmission transfer capacity between Connecticut and the remainder of New England is approximately 2200 MW.

[25] NRG's Norwalk Harbor units (1, 2, 10) are not currently under an RMR agreement because NRG makes more in the market due to the strategic location of those units.

[26] See, e.g. Devon Power LLC, FERC Dockets ER03-563-029-032-034-035-037-040-041-042.

Power's two new combined cycle plants, representing 484 MW;[27] and (3) PSEG Power's New Haven Harbor and Bridgeport Harbor 2 plants, representing 578 MW.[28] In addition, the FERC has just accepted Duke Energy's application for an RMR contract applicable to its new Bridgeport Energy plant representing an additional 448 MW.[29] Finally, On August 9, 2005 the United States Court of Appeals for the District of Columbia Circuit reversed the Commission's rejection of PPL Wallingford's application for RMR contracts for its 4 plants, representing 171 MW.[30] *PPL Wallingford Energy LLC, et al. v. FERC*, __ F3d __, (D.C. Cir. 2005) (Docket No. 03-1292). The Court remanded the matter back to the Commission for further findings. Several of these units under RMR contracts are new, efficient power plants, including Milford Power and Bridgeport Energy.

Connecticut has a total summer-rated electric generation capacity of 6,771 MW, located electrically within the State. The Commission has approved RMR contracts for a total of 2,307 MW, or 36% of Connecticut's total capacity. The Commission has pending Duke Energy's RMR contract representing an additional 448 MW, which, if approved, would increase RMR capacity to 43% of Connecticut's total capacity. In the event PPL's

[27] *Milford Power Company LLC*, 110 FERC ¶ 61,299 (March 22, 2005).

[28] *PSEG Power Connecticut LLC*, 110 FERC ¶ 61,020 (January 14, 2005).

[29] *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 (July 19, 2005). In this decision, the Commission accepted the RMR contract for filing and authorized the fixed payments due under the RMR contract to go into effect subject to refund. The Commission set for hearing, among other issues, the questions whether Bridgeport Energy was incapable of recovering a significant portion of its fixed costs through market revenues and whether granting a RMR contract was required to forestall deactivation of the plant. If Bridgeport Energy can affirmatively demonstrate both points; it is then entitled to full recovery of its fixed costs under a RMR agreement. Shortly after the Commission's decision in the Bridgeport Energy proceeding, the Commission issued its decision on rehearing in the Milford Power Company RMR proceeding, in which it confirmed the expansive availability of RMR contracts for generators in Connecticut. *Milford Power Company LLC*, 112 FERC ¶ 61,154 (Aug. 1, 2005) (*Order denying Request for Rehearing*).

[30] *PPL Wallingford Energy LLC and PPL Energy Plus LLC*, 105 FERC ¶ 61,324 (December 22, 2003).

Wallingford plants are eventually approved, more than 45% of Connecticut's capacity would be under cost-of-service RMR contracts.

In addition, many of Connecticut's other generation facilities are effectively removed from the competitive market by either contracting their supply or by participating in Commission-approved PUSH bidding.[31] Under the PUSH regime, the Commission has relaxed its market power mitigation rules, conceding that certain low capacity factor generation facilities will be allowed to drive clearing prices to supra-competitive levels. After removing the PUSH units, which are by definition not participating in a competitive market, and the units that have fully contracted their supply, only three generation units in all of Connecticut are participating in ISO-coordinated markets.[32] The fact that only three of Connecticut's 58 electric generation facilities are participating in the "market" – and are doing so to derive infra-marginal revenue streams that far exceed costs - is powerful evidence that something is awry with the application of Market Rule 1 to the current circumstances in Connecticut.

E. The Proliferation of Cost-Of-Service RMR Agreements in Connecticut Has Caused The Current Approach For Generator Compensation To Become Unjust And Unreasonable

[31] In its order in *Devon Power LLC et al.*, 103 FERC ¶ 61,082 (2003), the Commission directed the establishment of the PUSH regime as a modification to the market power mitigation rules previously adopted for the ISO-NE administered markets. From their inception, the ISO-NE administered markets have included extensive rules for the mitigation of market power to prevent generators from exploiting market power by pushing up their bids for the supply of power in circumstances where adequate competition from other generators does not exist. The PUSH regime removes this necessary protection by allowing units with low capacity factors, as measured during a prior historic period, the opportunity to increase their energy bids, under an exemption from the market power mitigation rules, to a level which provides for full fixed cost recovery (assuming that the same level of operation also occurs during the current period). To the extent the PUSH unit is the marginal supplier at a particular LMP node, supply bids from PUSH units also set the clearing price paid to all generators supplying power to that LMP node. To the extent that the PUSH unit operates in excess of the prior period, the increased revenues accrue to the PUSH designated unit.

[32] *See* Attachments 1-1, 1-2.

The proliferation of RMR agreements that provide for full cost of service recovery guarantees has fundamentally disrupted electricity markets and rendered the remaining Connecticut wholesale electricity market uncompetitive. As the Commission has itself acknowledged, the "proliferation of [RMR] agreements is not in the best interest of the competitive market[.]" *Devon Power LLC*, Docket No. ER03-563, 103 FERC ¶ 61,082 (2003), at P 31. Specifically, the Commission found that:

> RMR contracts suppress market-clearing prices, increase uplift payments, and make it difficult for new generators to profitably enter the market. That is because under current market rules, generators operating under a cost-of-service RMR contract must offer power under a Stipulated Bid Cost that includes stipulated marginal, start-up and no-load costs. The units are then entitled to a monthly fixed cost payment to the extent that revenues earned from the energy market, including any payments for start-up and no-load costs, do not recover allowable capacity costs and fixed O&M costs. As a result, expensive generators under RMR contracts receive greater revenues than new entrants, who would receive lower revenues from the suppressed spot market price. In short, extensive use of RMR contracts undermines effective market performance. In addition, suppressed market clearing prices further erode the ability of other generators to earn competitive revenues in the market and increase the likelihood that additional units will also require RMR agreements to remain profitable.

Id. at P 29. In Connecticut, RMR contracts appear to have reached a saturation point. All or nearly all units that would receive higher revenues under an RMR contract than they would under market-based revenue streams have sought Commission approval of an RMR contract. All or most of the non-RMR units are well-compensated under the pricing mechanisms of the DAM and RTM and, thus, have no incentives to seek Commission determinations that would bring their revenue streams into line with their actual costs.

It is axiomatic that generation facilities will seek RMR cost-of-service compensation only if market-based revenues are less than what they would receive under an RMR agreement. In other words, in light of ISO-NE's determination that all generators in

Connecticut are eligible for RMR contracts, generation owners in Connecticut are now given unbridled discretion to receive either market-based revenues or cost-based revenues, whichever is higher. As a result, customers are forced by the Commission to pay the "higher of" cost-based or market-based revenue on a unit-by-unit basis to all suppliers in Connecticut.

ISO-NE's rules extend RMR coverage to generators deemed "needed for reliability." As previously indicated, ISO-NE has determined that all generation in Connecticut qualifies as "needed for reliability" so that it qualifies for RMR coverage. Moreover, ISO-NE has expressly stated that its role in determining whether power plants are "needed for reliability" does not require it to make any judgment regarding the cost effectiveness among potential alternatives that may address the same reliability need addressed by the RMR Agreement.[33] The Commission, in turn, by granting RMR Agreements on an individual basis as they are proposed by generators, effectively has rubber-stamped ISO-NE's indifference to overall cost-effectiveness.[34]

Generators seeking RMR coverage can achieve it by, in effect, withholding generating capacity from the market – by threatening to deactivate their generation capacity

[33] In its *Motion for Leave to Answer and Answer* (dated Feb. 28, 2005) filed in the Milford Power Company LLC RMR proceeding, FERC Docket No. ER05-163, ISO-NE states, in relevant part (at pp. 8-9): "…[T]here is simply no requirement in Market Rule 1 that an applied-for RMR agreement must be the lowest cost alternative."

[34] *See Milford Power Company LLC*, 110 FERC ¶ 61,299 (March 22, 2005). One of the attachments to the Milford Power Company filing in Docket ER05-163 is a November 1, 2004 letter from Donald Ryan, the ISO's Manager, Reliability Contracts, to Milford Power Company LLC Vice President Gary A. Lambert, Jr. Mr. Ryan's letter states that the ISO's finding that the Milford unit is needed for reliability "takes into account the approval of the deactivation of Devon Unit 7 and Devon Unit 8, which were permitted to deactivate due to the commercial operation of the Milford units." Letter at 1-2. The fixed unit costs of the Devon 7 and 8 units are substantially less than those of Milford Power. Mr. Ryan's statement explains what had previously already been disclosed -- that the Devon units were allowed to retire because of the commercial operation of the Milford units. The statement fails to address a critical unanswered question -- why the ISO managed reliability in Connecticut into the position where consumers have to pay two times the cost for more than two times the megawatts to achieve what is apparently the same level of service reliability.

absent the extension of RMR coverage.[35] Certain generators in Connecticut operate under RMR agreements while still retaining other generating units in the market not under RMR coverage but instead under market-based rate authority. *See PSEG Power Connecticut LLC*, 110 FERC ¶ 61,020. This is fully equivalent to the exercise of impermissible market power through the withholding of generation capacity for the purpose of forcing market prices upwards – the very essence of the exercise of market power. The only difference, but one without substance, is that generators are now able to exercise their control over pivotal resources to extract regulatory payments on a selective basis, with Commission blessing, rather than withholding capacity to force prices upward directly in the market.

F. Generating Units Not Under RMR, Electing To Opt Out of RMR Coverage, Are Receiving Market-Based Revenue Streams Well in Excess of Their Cost of Service

The vast majority of generation capacity in Connecticut remaining in the market and not subject to RMR coverage is: (a) either low variable cost nuclear or coal-fired electric generation capacity (Millstone 2 and 3 and Bridgeport Harbor 3); or (b) higher variable cost oil and/or natural gas units strategically located in areas without competitors for a substantial portion of their output (Norwalk Harbor 1 and 2). On information and belief, as further documented below, these plants are earning in the current environment profits well in excess of the rates of return that they would receive under traditional cost-of-service ratemaking.

Based on publicly available information, nuclear and coal-fired generation (comprising approximately 30% of electric capacity in Connecticut) are estimated to operate with variable costs of approximately $20/megawatt-hour ("MWh"). Meanwhile, locational marginal prices ("LMP") paid in the day-ahead market for electric energy delivered at the

[35] For generation capacity located in Connecticut, the Commission has removed even the requirement that generators formally request deactivation, allowing ISO-NE to study the request. *Devon Power LLC*, 109 FERC ¶ 61,154, at p. 27 (2003).

nodes at which such generation is located for a recent 12-month snapshot ending September 6, 2005 were approximately $62/MWh, leaving a substantial gross operating margin of approximately $42/MWh.[36] The following table provides an indication of the estimated relevant financial operating parameters for the major base-load electric generators remaining in the "market" and not subject to RMR coverage.[37]

[36] Current forward market prices in Connecticut are approximately $90/MWh for calendar year 2006. Assuming these forward prices prevail in 2006, the operating margin for these plants increases to $70/MWh.

[37] The work papers supporting these estimates are provided in Attachments 2-1 through 2-6.

	Bridgeport Harbor 3	Millstone 2	Millstone 3
Generating Capacity (MW)	371.44	904.65	1155.61
Assumed Capacity Factor (%)	82	86.77	92.83
Annual Energy Production (MWh)	2,668,110	6,876,028	9,397,638
Average day ahead market LMP at delivery node 09 07 04 to 09 06 05 ($/MWh)	62.85	62.05	62.06
Market Revenue from Energy Sales ($1000s)	$167,691	$426,658	$583,217
Variable Cost ($/MWh)	$22.61	$17	$15
Annual Fixed Cost* ($1000s)	$30,202	$73,840	$86,454
Cost of Service Return** ($1000s)	$7,290	$55,103	$72,199
Cost of Service Depreciation*** ($1000s)	$3,645	$20,256	$19,964
Cost of Service Taxes ($1000s)	$2,460	$18,597	$24,367
Cost of Service Over-recovery ($1000s)+	**$63,768**	**$141,970**	**$239,269**
Rate of Return on Equity from Market Revenue (%)	**123.33**	**44**	**53.48**
* Includes fixed operation and maintenance, property taxes, and administrative and general costs			
**Assumes 60/40 debt/equity capital structure and 10.88% ROE; rate base is deemed equal to acquisition costs with capital additions deemed to net against depreciation since removal from regulated rate base for BH3 and $350 million in gross capital additions to Millstone 2 and 3 since acquisition by the current owner in 2001. *See* Attachments 2-1 and 2-2.			
*** Assumes depreciation based on remaining lives of facilities, including NRC license extensions currently pending for the Millstone units			
+ Market Revenues less Variable Cost, Fixed Cost, Return, Depreciation and Taxes.			

In summary, the baseload generating plants in Connecticut opting out of RMR coverage are recovering more than $445,006,000 (based on the average price for electric

energy over the last twelve months) in excess of the revenue they would be earning under traditional Commission cost of service. This amount is substantially greater than the amount of fixed charge payments that are currently being charged to load-serving entities in Connecticut for RMR contracts. Ratepayers pay once for RMR charges to support "needed" generators opting for RMR coverage and then pay that amount again, plus an additional 50%, by way of excess returns to those generators opting to remain on market-based revenue streams.

As noted, the foregoing estimates are based on the average price for electric energy over the prior twelve months. With the recent dramatic increase in forward prices for round-the-clock power delivered in calendar year 2006 to approximately $90/MWh, the over-recovery and respective rates of return on equity for each of the three plants (assuming revenues derived by the plants in 2006 is consistent with current forward pricing for that period) are as follows:

	Bridgeport Harbor 3	Millstone 2	Millstone 3	Total
Rate of Return on Equity (%)	257.06	88.33	100.23	
Over-recovery revenues ($thousands)	136,207	334,155	501,839	972,201

Current forward pricing quotes from the market may be the best current estimate of likely pricing during the relevant period; thus, these measures of financial operations for the three plants in 2006 are reasonable current estimates. By any measure, these are extraordinary and unconscionable levels of return. At the levels projected assuming LMP prices of $90/MWh in 2006, the recovery in excess of cost of service to these three plants

represents approximately 25% of the current aggregate annual expenditure at retail for electric energy in Connecticut.[38]

In addition, NRG's Norwalk Harbor units are also earning returns well in excess of their cost of service. As a result of prior Commission rulings, the Norwalk Harbor Units are authorized to bid their sale of output up to a safe-harbor level without being subject to market power mitigation (the so-called peaking unit safe harbor or PUSH bidding thresholds).[39] On information and belief, the PUSH levels for the Norwalk Harbor units are substantially above the variable and fixed costs associated with operating the units.[40] Based upon NRG's own cost of service estimates filed with the Commission in 2004, the Connecticut Representatives calculate that these units are earning a rate of return on equity of nearly 115%. Attachments 2-7, 2-8. This is because the Norwalk Harbor units are the only major generating units located within the Norwalk-Stamford load pocket of Southwestern Connecticut and they are often operated to maintain bulk power system security and contingency response, even when their energy bid prices are substantially in excess of the price of marginal oil or gas-fired units in the New England region. In such circumstances, these units are able to extract substantial margins in the form of RMR Operating Reserve charges due to their exercise of market power and their strategic location on the transmission grid.

---

[38] Connecticut's annual electric load is approximately 34 million MWh. Retail average rates are approximately 12 cents/kWh – such that the annual retail bill is approximately $4 billion.

[39] *Devon Power LLC, et al.*, 102 FERC ¶ 61,314; *Devon Power LLC, et al.*, 103 FERC ¶ 61,082; *reh'g granted in part and denied in part*, 104 FERC ¶ 61,123 (2003) (*Devon Power*); *See also*, *PPL Wallingford Energy LLC*, 103 FERC ¶ 61,085; *reh'g granted in part and denied in part*, 105 FERC ¶ 61,324 (2003).

[40] NRG management reported in a presentation made to Wall Street analysts and posted to the NRG internet web-site that the Norwalk Harbor units were estimated to contribute over $39.5 million to EBIDTA in calendar year 2004. NRG, *Presentation of Third Quarter 2004 Financial Results*, p. 8 (included herein as Attachment 3). The Connecticut Representatives have extrapolated the likely earnings from the NRG Norwalk Harbor units based upon NRG's reported figures and prior cost of service information submitted by NRG for Norwalk Harbor to FERC. The Connecticut Representatives do not concede that NRG's reporting is accurate and, therefore, NRG's actual earnings could be higher.

Under SMD in New England, generators are paid in the day ahead or real time spot energy markets during each hour a price (the LMP) that is set equal to the (1) cost of supplying the last increment of energy at the delivery "node" on the electric grid to which the generator connects, plus (2) an amount equal to the marginal losses associated with delivery of energy at that particular node. Generators submit bids into the market at levels that are no less than the variable cost of operation of their generation. In New England, generation fired on natural gas or oil is generally supplying the last increment of energy at particular nodes on the system; hence, the LMP paid to all generators generally is no lower than the cost of natural gas or oil-fired generation. In the current regime, plants operating under RMR contracts bid their energy into the day ahead and real time markets based on their variable non-fuel operating costs and a current index of fuel costs. As noted above, plants opting to remain in the "market" are earning excess returns either because: (a) their variable costs are substantially below the LMP prices paid to all generators, such as Bridgeport Harbor 3 or the two Millstone plants; or (b) they are able to extract substantial margins due to their strategic location in a load pocket, such as the Norwalk Harbor units.

The fundamental hallmark of efficient markets is that they drive prices close to marginal cost and that sellers cannot maintain supra-competitive rates of return on their investment. "[I]n a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that the price is close to marginal cost, such that the seller makes only a normal return on its investment." *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990).

Based on the foregoing, the electric generation market in Connecticut is not competitive in any meaningful sense. Owners of generation can opt into or out of RMR coverage, shifting investment risk fully to ratepayers. Those opting into RMR coverage receive guaranteed rate recovery of their cost of service paid by load-serving entities, and ultimately ratepayers through state-approved rate mechanisms that provide for pass-through of these costs. The generating plants with lower variable costs (the base-load plants) have opted not to seek RMR coverage because, under Market Rule 1, they are compensated at levels set by the higher cost units, or are able to leverage their strategic location to extract out of merit Operating Reserve uplift payments. As a result, these plants are earning returns well in excess of those available from cost of service rates. Moreover, under the current system, ratepayers are, in effect, forced to pay twice, once for the RMR fixed cost charges and again for the excess returns earned by generators opting out of RMR coverage. These circumstances violate the Federal Power Act's mandate to the Commission that rates for electric service be just and reasonable.

IV. RELIEF REQUESTED

The Connecticut Representatives respectfully request that the Commission amend Market Rule 1 to revise the settlement and compensation procedures for electric generation facilities within the Connecticut reliability zone. Specifically, the Connecticut Representatives propose that the Commission amend Market Rule 1, Appendix A, § III.A.6 and Appendix A, Exhibit 2, § 3.2. to ensure that all electric generation facilities that have been designated as an RMR Resource or are otherwise determined by ISO-NE as necessary for reliability in Connecticut must apply to the Commission for cost-of-service compensation.

The Connecticut Representatives suggest that the following amendments to Market Rule 1, Appendix A, Exhibit 2, § 3.2. could form the basis of an appropriate remedy:

> *Procedure For Negotiation Of RMR Agreements.* ISO-NE shall, on an annual basis, conduct a unit by unit analysis of all electric generation facilities in Connecticut to determine whether such generation facilities are necessary for reliability.
>
> Entities designated as an RMR Resource [whereby their fixed costs are paid under RMR contracts] pursuant to Section III.A.6 of ***Appendix A*** ~~may~~ [or are otherwise determined by ISO-NE as necessary for reliability in Connecticut shall] apply to the ISO for such an agreement (an "RMR Agreement"). For purposes of this procedure, the Market Participant with the authority to submit Supply Offers for such Resource shall be called the "RMR Seller."

The RMR agreement described herein should also be subject to the following specific remedial conditions:

(a) All electric generators in Connecticut, operating under market-based rate authority would be paid their annual fixed costs on a ratable basis, where all capital recovery incorporated in the fixed costs payment is based on the lower of: (i) actual, prudently incurred cost (as documented under the Commission's Uniform System of Accounts, and where applicable for facilities previously subject to cost of service recovery, as documented in the last accounting record prepared of such costs prior to removal from regulated rate base); or (ii) acquisition cost.

(b) All such electric generators would be authorized to bid up to their variable cost in the DAM and RTM and must credit any infra-marginal revenues received from bidding their output of any product into the electric markets administered by ISO-NE, as well as any applicable bilateral contract revenues, against the fixed cost recovery identified in (a) above. "Infra-marginal revenues" would be measured by the difference between the revenues paid to the generating unit by ISO-NE and the variable cost of operation of the particular generating unit.

The amendments to Market Rule 1 would require that all electric generation facilities in Connecticut would henceforth be compensated on a cost-of-service basis until the Commission is able to make and support affirmative findings that re-introduction of market-based revenue streams is consistent with the just and reasonable standards of the Federal Power Act. These findings would need to include determinations that electricity markets in Connecticut are truly competitive, and affirmative findings that the predicates necessary for competition are actually in place (e.g., transparent information, no/minimum barriers to entry, no delivery costs), that prices reflect marginal costs, that sellers would have a reasonable opportunity to receive only a proper return on investment, and that consumers are only charged rates that are just and reasonable. The Commission should open a proceeding within one year of the completion of the currently scheduled transmission projects in Connecticut to review the market structure in Connecticut and to determine whether market-based compensation is capable of being squared with the Federal Power Act.

V. COMPLIANCE WITH COMMISSION RULE 206

Pursuant to Rules 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.206, the Connecticut Representatives submit the following additional representations.

- Rule 206(b)(1). See Section III, above.

- Rule 206(b)(2). See Section III, above.

- Rule 206(b)(3). The CTAG is the chief legal officer of the State of Connecticut. The CTAG is an elected Constitutional officer of the State of Connecticut. Among the CTAG's responsibilities are interventions in various types of proceedings to protect the State, the public interest and the people of the State of Connecticut, and assuring the enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act and Antitrust Act, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses. The CTAG's initiation of this proceeding is in furtherance of these overall responsibilities.[41]

  This matter involves the continued availability of market-based revenue streams for electric generation facilities in Connecticut in an environment where the wholesale electricity markets are no longer workably competitive. As a result, the rates for electricity are far higher than just and reasonable as required by the FPA. The resolution of these issues by the Commission with therefore will have direct and profound impacts upon consumers in Connecticut.

  As the public official charged with responsibility to represent the State, the public interest and the people of the State of Connecticut with respect to such matters insofar as they affect the electric industry and electric consumers in

[41] The CTAG has previously initiated or intervened in a number of recent FERC proceedings addressing important policy issues affecting the electric industry and electric ratepayers in Connecticut and New England. These proceedings include FERC Docket Nos: ER05-715, ISO-New England; ER05-611-000, Bridegport Energy, LLC; ER05-231-000, PSEG Power Connecticut, LLC; ER05-163-000, Milford Power Company, LLC; ER03-563-030, Devon Power LLC, *et al.*; EL03-123, Richard Blumenthal, Attorney General for the State of Connecticut and The Connecticut Department of Public Utility Control v. NRG Power Marketing, Inc.; EL03-129-000, The Connecticut Light and Power Company; ER03-421-000, PPL Wallingford Energy LLC and PPL Energy Plus LLC; ER02-2463-001, ISO New England Inc; RT02-3-000, ISO-New England and New York Independent System Operator: Joint Petition for Declaratory Order Regarding the Creation of a Northeast Regional Transmission Organization; ER02-2330-000, New England Power Pool and ISO-New England, Inc.; RT01-86-000, the filing for a regional transmission organization ("RTO") for the New England Region; RT01-99-000, Regional Transmission Organizations; RM01-12-000, Electricity Market Design and Structure; and Docket Nos. EC01-70-000 and ER01-1259-000, Wisvest-Connecticut, LLC and NRG Connecticut Power Assets.

Connecticut, the CTAG's interests in this matter are direct and substantial, and no other party can represent adequately those interests.

CT OCC, an independent agency of the State of Connecticut, is the statutory advocate for Connecticut consumers in utility matters (including the electric industry). Under Connecticut General Statutes § 16-2a(a), CT OCC is "authorized to appear in and participate in any regulatory or judicial proceedings, federal or state" in which the interests of Connecticut consumers in utility matters may be affected, or in which matters affecting utility services rendered or to be rendered in Connecticut may be involved.

This matter involves the availability of market-based revenue streams in a wholesale electricity market that is no longer competitive. As a result, rates for electricity are higher than just and reasonable. These unjust and unreasonable rates flow through to Connecticut consumers and affect the rates for electricity service paid by Connecticut consumers.

CT OCC therefore represents an interest which is directly affected by the outcome of this proceeding -- namely, the interests of Connecticut consumers of electric services.

The Connecticut Municipal Electric Energy Cooperative is a non-profit municipal joint action electric agency which provides the power supply requirements, at wholesale, of six municipal electric department participants with retail service territories located within the State of Connecticut (five of whom are members of CMEEC) as well as several other Connecticut customers purchasing power at wholesale.[42] CMEEC is a political subdivision of the State of Connecticut created in 1976 pursuant to Conn. Gen. Stat. §§ 7-233a *et seq*. CMEEC's customer loads in Connecticut are, in aggregate, approximately 366.1 MW (2004 peak load) and 2,177 GWh (2004 energy). CMEEC is an active participant in the New England wholesale power markets, a NEPOOL Participant and a load-serving entity of long-standing. In addition, CMEEC is Connecticut's designated bargaining agent and contracting party with respect to the State's allocation of New York Power Authority ("NYPA") "preference" hydroelectric power and energy.

The complaint addresses critical and core issues relating to the cost of wholesale power in Connecticut and the current lack of conformity of the wholesale electric market in Connecticut to the requirements of the Federal Power Act. CMEEC, as a representative of and supplier to Connecticut-

[42] Specifically, CMEEC provides power supply service to members: the City of Norwich Public Utilities, the City of Groton Department of Utilities, the Borough of Jewett City Department of Public Utilities, South Norwalk Electric and Water, the Third Taxing District of the City of Norwalk Electric Department; and to a participant: the Town of Wallingford Department of Public Utilities – Electric Division; and to customers: the Bozrah Light & Power Company (owned by the City of Groton Department of Utilities) and the Mohegan Tribal Utility Authority.

based, load-serving entities participating in New England's wholesale electric generation markets, must pay for the costs of purchased power which are and will be substantially affected by such issues and their appropriate resolution. As such, CMEEC's interests in this proceeding are obviously direct and substantial, and no other party can adequately represent these interests.

Connecticut Industrial Energy Consumers is an *ad hoc* coalition of energy-intensive industrial consumers of electricity that have facilities located in the State of Connecticut. CIEC has actively participated at both the Connecticut General Assembly and the Connecticut Department of Public Utility Control in the development and implementation of electric restructuring.

This matter involves the availability of market-based revenue streams in Connecticut where the wholesale electricity markets are no longer workably competitive. As a result, the rates for electricity, ultimately paid by CIEC members through retail rates, are far higher than just and reasonable as required by the FPA. As a coalition of large commercial and industrial end-users of electricity, CIEC has a direct and substantial interest in the resolution of the issues raised by the instant Complaint, which cannot be adequately represented by any other party.

- Rule 206(b)(4). See Section IV(F), above. The costs to Connecticut consumers has been more than $445 million over the past 12 months. If the current forward market prices for electricity in Connecticut remain at $90/MWh for 2006, the cost to Connecticut consumers could rise to nearly $1 billion a year.

- Rule 206(b)(5). The Connecticut Representatives are unaware of any non-financial impacts imposed as a result of the proposed action.

- Rule 206(b)(6). The specific issues giving rise to the need for amendments to Market Rule 1, Appendix A, § III.A.6 and Appendix A, Exhibit 2, § 3.2. to ensure that all electric generation facilities that have been designated as an RMR Resource or are otherwise determined by ISO-NE as necessary for reliability in Connecticut must apply to ISO-NE for cost-of-service compensation, are not pending in any Commission proceeding or any other forum to which the Connecticut Representatives are parties.

- Rule 206(b)(7). See Section IV, above.

- Rule 206(b)(8). See Attachments 1 through 3.

- Rule 206(b)(9). The Connecticut Representatives have not engaged in any dispute resolution process and do not believe that any alternative dispute resolution is appropriate in this matter. The continued application of Market Rule 1 to Connecticut is unlawful under the FPA.

- Rule 206(b)(10). See Attached Notice of Complaint Requesting Fast Track Processing.

- Rule 206(b)(11). The Connecticut Representatives state that fast track processing is necessary because Connecticut electric ratepayers are experiencing continuous injury as a result of the application of Market Rule 1 to Connecticut. Connecticut electric consumers are paying rates that are far in excess of just and reasonable, creating unreasonable burdens on Connecticut's citizens and its economy. These consequences have profound and injurious effects on Connecticut's citizens, businesses and economy. In addition, it may be difficult or impractical for the Commission to provide direct refunds to ratepayers. Finally, the current forward market prices for electricity for Connecticut have risen to nearly $70/MWh for 2006. Under these circumstances, the cost burdens to Connecticut consumers could quickly rise to nearly $600 million a year. It is therefore a matter of the utmost urgency for the Commission to act immediately and without delay. In this regard, the Connecticut Representatives request a shortened response time and that the relief sought be granted summarily on an expedited basis following the submission of an answer and without an evidentiary proceeding. In the event the Commission is unable to grant the relief requested without an evidentiary hearing, the Connecticut Representatives request that the matter be set for an expedited hearing.

VI. CONCLUSION

WHEREFORE, for the reasons discussed herein, the Connecticut Representatives respectfully urge the Commission to grant the relief requested herein unless and at least until it makes the requisite findings, based on empirical proof, that the re-introduction of market-based revenue streams for Connecticut generators comports with the Federal Power Act.

Respectfully submitted,

_____/s/_____
RICHARD BLUMENTHAL
ATTORNEY GENERAL FOR THE
STATE OF CONNECTICUT,
55 Elm Street
Hartford, CT 06106
Tel: (860) 808-5318
Fax: (860) 808-5387

CONNECTICUT OFFICE OF
CONSUMER COUNSEL,

By: /s/

Mary J. Healey, Esq.
Joseph A. Rosenthal, Esq.
Office of Consumer Counsel
10 Franklin Square
New Britain, CT 06051
Tel: (860) 827-2900
Fax: (860) 827-2929

CONNECTICUT MUNICIPAL
ELECTRIC ENERGY
COOPERATIVE,

By: /s/

Scott H. Strauss
Spiegel & McDiarmid
1333 New Hampshire Avenue, NW
Washington, DC 20036
Tel: (202) 879-4035
Fax: (202) 393-2866

CONNECTICUT INDUSTRIAL
ENERGY CONSUMERS,

By: /s/

Barbara S. Brenner
Robert M. Loughney
Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, NY 12201
Tel: (518) 426-4600
Fax: (518) 426-0376

Dated: September 12, 2005

CERTIFICATE OF SERVICE

I, John S. Wright, hereby certify that on this day I caused the foregoing to be served on each person designated below as required by Commission Rule 206(c), 18 C.F.R. § 385.206.

VIA E-MAIL

Respondent

ISO NEW ENGLAND INC

Gordon van Welie
President and Chief Executive Officer
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Telephone: 413-535-4000
Fax: 413-540-4298
gvanwelie@iso-ne.com

Kathleen A. Carrigan
Sr. VP, Gen. Counsel, & Secretary
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-2841
Telephone: 413-535-4000
Fax: 413-535-4379
kcarrigan@iso-ne.com

VIA FIRST CLASS MAIL

PUCs, Public Entities

Conn. Dept. of Public Utility Control

Randall L. Speck, Esq.
Kaye Scholer LLP
901 15th St NW Ste 1100
Washington , DC 20005-2327

John G. Haines
Assistant Attorney General
Conn. Dept. of Public Utility Control
10 Franklin Sq
New Britain , CT 06051-2655

Maine Public Utilities Commission

Kurt Adams
Chairman
Maine Public Utilities Commission
242 State Street, State House Station 18
Augusta, ME 04333

Massachusetts Dept. of Telecom. & Energy

Sheila M Renner
Mass. Dept. of Telecommunications & Energy
One South Station
Boston , MASSACHUSETTS 02110
sheila.renner@state.ma.us

Massachusetts Office of Attorney General

Joseph W. Rogers
Division Chief
Massachusetts Office of Attorney General
One Ashburton Place
Boston , MASSACHUSETTS 02108-1598
joseph.rogers@ago.state.ma.us

New England Conference of Public Utilities

Harvey L Reiter
Stinson Morrison Hecker LLP
1150 18th St. N.W.
Suite 800
Washington , DC 20036
hreiter@stinsonmoheck.com

William M. Nugent
Executive Director
NECPUC
1 Eagle Square, Suite 514
Concord, NH 03301

New Hampshire Public Utilities Commission

Amy Ignatius
General Counsel
New Hampshire Public Utilities Commission
21 South Fruit Street
Suite 10
Concord , NEW HAMPSHIRE 03301-2429
amy.ignatius@puc.nh.gov

Rhode Island Division of Public Utilities and Carriers

John Spirito
Chief of Legal Services
Rhode Island Division of Public Utilities and Carriers
Son Blvd
Warwick, RI 06901

Vermont Department of Public Service

David O'Brien
Commissioner
Vermont Department of Public Service
112 State Street, Drawer 20
Montpelier, VT 06520

Connecticut Electric Utility Companies

Northeast Utilities

Cheryl W. Grise
Vice President, Secretary and General Counsel
Northeast Utilities
107 Selden Street
Berlin, CT 06037
Post Office Box 270
Hartford, CT 06141-0270
Telephone: 860-665-3639
Fax: 860-665-5504
Email: grisecw@nu.com

The United Illuminating Company

Robert T. Gagliardi
Director of Strategic Policy
The United Illuminating Company
157 Church Street
New Haven, CT 06506-0901
Telephone: 203-499-2398
Fax: 203-499-3624
Email: bob.gagliardi@uinet.com

Stephen F. Goldschmidt
Vice President-Planning & Information Resources
The United Illuminating Company
157 Church Street
New Haven, CT 06506-0901
Telephone: 203-499-2020
Fax: 203-499-3616
Email: stephen.goldschmidt@uinet.com

NEPOOL Participants Committee

David T Doot
Day, Berry & Howard LLP
CITYPLACE I
185 Asylum St Fl 26
Hartford , CT 06103

Connecticut Generators

Dominion Energy Services Company

Patricia A. Wilkerson
Vice President and Corporate Secretary
Dominion Resources, Inc.
120 Tredegar Street
Richmond, VA 23219
Telephone: 804-819-2120
Fax: 804-819-2233
Email: wilkersonp@domres.com

Christine M. Schwab, Esq.
Assistant General Counsel
Dominion Resources, Inc.
120 Tredegar Street
Richmond, VA 23219
Telephone: 804-819-2142
Fax: 804-819-2202
Email: schwabc@domres.com

Michael C. Regulinski
Senior Counsel
Dominion Resources Services, Inc.
120 Tredegar Street
PH-1
Richmond , VIRGINIA 23114
Michael_Regulinski@Dom.com

Duke Energy North America LLC

George Johnson
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street
Washington,DC , 20037
Johnsong@dsmo.com

Brent C. Bailey
Vice President and General Counsel
Duke Energy Americas
5400 Westheimer Court
Houston, TX 77056
Telephone: 713-627-5307
Fax: 713-386-4076
Email:bbailey@duke-energy.com

Gretchen Schott
Assistant General Manager
Duke Energy North America, LLC
370 17th Street, Suite 2500
Denver, CO 80202
Telephone: 303-605-1702
Fax: 713-386-4111
Email: gschott@duke-energy.com

Connecticut Resources Recovery Authority

Christopher J. Francher
Facilities Engineer
CT Resources Recovery Authority
100 Constitution Plaza
Hartford, CT 06103
Telephone: (860) 757-7733
Telecopier: (860) 757-7742
cfancher@crra.org

Richard Quelle
Facilities Engineer
CT Resources Recovery Authority
100 Constitution Plaza
Hartford, CT 06103
Telephone: (860) 757-7707
Telecopier: (860) 757-7742
rquelle@crra.org

Lake Road Generating Company, LLP

Tim Bofman
Operations Manager
Lake Road Generating Company
56 Alexander Parkway
Dayville, CT 06241
Telephone: (860) 779-8358
Telecopier: (860) 779-8360
Tim.Bofman@lrgclp.com

William Fowler
President
Lake Road Generating Company
c/o Sigma Consultants, Inc., 20 Main Street
Acton, MA 01720
Telephone: (978) 266-0220
Telecopier: (978) 263-5455
wfowler@sigmaconsult.com

Sanford L. Hartman
Vice President and Associate General Counsel
PG&E National Energy Group
7500 Old Georgetown Road, 13th Floor
Bethesda, MD 20814
Telephone: 301-280-6800
Fax: 301-280-6913
Email: Sanford.Hartman@neg.pge.com

MILFORD POWER CO LLC

Gary A. Lambert Jr.
Exec. Vice President
MILFORD POWER CO LLC
Suite 107
35 Braintree Hill Office Park
Braintree , MA 02184

George Johnson
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street
Washington,DC , DISTRICT OF COLUMBIA 20037
Johnsong@dsmo.com

NRG Energy, Inc.

Scott Davido
General Counsel
NRG Energy, Inc.
901 Marquette Avenue, Suite 2300
Minneapolis, MN 55402
Telephone: 612-313-8761
Fax: 612-373-5392
Email: scott.davido@nrgenergy.com

Joseph M. Devito, Executive Director of Regulatory Affairs
NRG Energy, Inc.
901 Marquette Avenue, Suite 2300
Minneapolis, MN 55402-5369
Telephone: 612-313-8918
Fax: 612-373-8686
Email: joe.devito@nrgenergy.com

PPL Wallingford Energy LLC and PPL Energy

Jesse A. Dillon, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Telephone: 610-774-5013
Fax: 610-774-6726
Email: jadillon@pplweb.com

PSEG Companies

Larry F Eisenstat
Esquire
Dickstein Shapiro Morin & Oshinsky LLP
2101 L St NW
Washington , DC 20037

Jeffrey C Mueller
Manager - Fed. Reg. Policy
Public Service Enterprise Group
80 Park Plaza
T5F
Newark , NEW JERSEY 07102
jeffrey.mueller@pseg.com

Daniel Ciullo
Marketing Manager - New England
PSEG Energy Resources & Trade
80 Park Plaza, T-19
Newark, NJ 07102-4194
Telephone**:** (508) 243-0032
Telecopier**:** (973) 623-9352
daniel.ciullo@pseg.com

/s/
John S. Wright

Dated: September 12, 2005

Attachments

1-1, 1-2

Attachment 1-1
Connecticut Electric Generation Capacity and Economic Arrangements (2005)

Unit Number and Name	Area	Fuel	Capacity Winter (MW)	Capacity Summer (MW)	Type of Econ Arrangement
485 MILLSTONE POINT 3 N CT	CT	NUC	1157.1	1130.5	"Market"
484 MILLSTONE POINT 2 N CT	CT	NUC	879.2	871.6	"Market"
484 Millstone 2 Uprate N CT	CT	NUC	26.5	31.3	"Market"
513 NEW HAVEN HARBOR F CT	CT	RFO	454.6	461.2	RMR
1032 BRIDGEPORT ENERGY	SWCT	NG	527.1	447.9	RMR
494 MONTVILLE 6 F CT	CT	RFO	409.9	407.4	RMR
482 MIDDLETOWN 4 F CT	CT	RFO	402	400	RMR
340 BRIDGEPORT HARBOR 3	SWCT	BIT	370.4	372.2	"Market"
1385 Milford Unit 1 CC	SWCT	NG	262	245	RMR
1386 Milford Unit 2 CC	SWCT	NG	262	245	RMR
481 MIDDLETOWN 3 F CT	CT	RFO	245	236	RMR
594 AES THAMES	CT	BIT	182.2	181	Contract
520 NORWALK HARBOR 2 F	NOR	RFO	172	168	PUSH
519 NORWALK HARBOR 1 F	NOR	RFO	164	162	PUSH
339 BRIDGEPORT HARBOR 2	SWCT	RFO	157.7	130.5	RMR
480 MIDDLETOWN 2 F CT	CT	RFO	120	117	RMR
390 DEVON 7	SWCT	RFO	109	107	Deactivated
391 DEVON 8	SWCT	RFO	109	106.8	Deactivated
493 MONTVILLE 5 F CT	CT	RFO	81.6	81	RMR
349 BRIDGEPORT RESCO F	NOR	MSW	58.7	59.1	Contract
324 AETNA CAPITOL DISTRICT	CT	CC NG	57.8	55.3	Contract
1378 WALLINGFORD 3	SWCT	NG	49.8	44.9	RMR Appeal
1376 WALLINGFORD 1	SWCT	NG	48.9	44.5	RMR Appeal
1379 WALLINGFORD 4	SWCT	NG	47.5	42.2	RMR Appeal
566 SHEPAUG HW	SWCT	WAT	42.6	41.5	Contract
1380 WALLINGFORD 5	SWCT	NG	50.9	39.9	RMR Appeal
1377 WALLINGFORD 2	SWCT	NG	49.5	38.5	RMR Appeal
574 SO. MEADOW 13 J CT	CT	JF	47.9	38.3	RMR Appeal
392 DEXTER CC CT	CT	CC NG	39	38	Contract
573 SO. MEADOW 12 J CT	CT	JF	47.9	37.7	Contract
575 SO. MEADOW 14 J CT	CT	JF	47.4	37.4	Contract
572 SO. MEADOW 11 J CT	CT	JF	46.9	35.8	Contract
399 DEVON 13	SWCT	NG	42.3	33.3	RMR
397 DEVON 11 G	SWCT	NG	39.6	30.1	RMR
398 DEVON 12	SWCT	NG	39	29.8	RMR
400 DEVON 14	SWCT	NG	40.2	29.6	RMR
739 ROCKY RIVER HW	SWCT	WAT	29	29.2	Contract
587 STEVENSON HW	SWCT	WAT	28.9	28.3	Contract
581 SO. MEADOW 6 F CT	CT	MSW	30.4	27.1	Contract
411 EXETER F CT	CT	TDF	25.7	26	Contract
580 SO. MEADOW 5 F CT	CT	MSW	29.2	25.6	Contract
372 COS COB 12 J	NOR	JF	23.3	18.4	PUSH
371 COS COB 11 J	NOR	JF	23.2	18.2	PUSH
370 COS COB 10 J	NOR	JF	22.8	17.9	PUSH
478 MIDDLETOWN 10 J CT	CT	CT JF	22	17.1	RMR
355 BRANFORD 10	SWCT	JF	21.3	16.2	PUSH
595 TORRINGTON TERMINAL 10 J CT	CT	JF	21	16	PUSH
562 SECREC-PRESTON F CT	CT	MSW	16.9	16	Contract
596 TUNNEL 10 J CT	CT	JF	20.8	15.9	PUSH
420 FRANKLIN DRIVE 10 J CT	CT	CT JF	20.5	15.4	PUSH
515 NORWICH JET J CT	CT	CT DFO	18.8	15.3	Market
356 BRISTOL REFUSE	CT	MSW	12.7	13.2	Contract
462 LISBON RESOURCE RECOVERYF	CT	MSW	13	13	Contract
521 NORWALK HARBOR 10 (3)	NOR	DFO	17.1	11.9	PUSH
341 BRIDGEPORT HARBOR 4	SWCT	JF	14.7	9.9	RMR
412 FALLS VILLAGE HD CT	CT	WAT	11	9.8	Contract
362 BRISTOL REFUSE HD CT WAT	CT	WAT	8.4	8.4	Contract
544 RAINBOW HD CT WAT	CT	WAT	8.2	8.2	Contract

389 DERBY DAM HD	SWCT	WAT	7.1	7.1	Contract
623 WALLINGFORD REFUSE	SWCT	MSW	6.9	6.4	Contract
492 MONTVILLE 10 and 11 D CT	CT	DFO	5.4	5.3	RMR
Total (including deactivated)			7345.5	6973.1	
Total (less deactivated)			7127.5	6759.3	

Source: ISO-NE RTEP 04 Technical Appendix.

Glossary: BIT means coal; CC means combined cycle; CT (in the fuel column) means combustion turbine; DFO means diesel fuel oil; JF means jet fuel; MSW means municipal solid waste; NG means natural gas; NOR means the Norwalk-Stamford transmission area; NUC means nuclear; PUSH means peaking unit safe-harbor; RMR means reliability must-run; SWCT means southwestern Connecticut (excluding NOR) transmission area; WAT means hydroelectric.

Attachment 1-2
Summary Statistic of Economic Arrangements for Connecticut Electric Generation Capacity

	Summer Capacity (MW)	% of total Connecticut capacity (excluding deactivated capacity)
RMR or RMR Appeal Capacity	3174.4 MW	46.96
"Market" (M2, M3 and BH3)	2420.9 MW	35.82
Contracted Capacity	704.1 MW	10.42
PUSH	459.9 MW	6.80
Total	6759.3 MW	100.00

Attachments

2-1 through

2-8

Attachment 2 – 1
Overrecovery of Cost of Service of "Market" Generating Plants

			Unit Name				
			Bridgeport Harbor 3 (BH3)	Millstone 2 (M2)	Millstone 3 (M3)	Totals	Data Source (See attachment 2-2_
Unit Characteristics	Generation Capacity	MW	371.44	904.65	1155.61	2,431	1
Spot Market Revenues	Annual Capacity Factor	%	82	86.77	92.83		2
	Annual Output	MWh	2,668,110	6,876,028	9,397,638	18,941,775	3
	Energy Price Spot Market	$/MWh	62.85	62.05	62.06		4
Going Forward Costs	Energy Spot Market Revenues	$1000s	167,691	426,658	583,217	1,177,566	5
	Variable Cost (Fuel)	$/MWh	20.6	4.25	3.75		6
	Variable Cost (non-fuel O&M)	$/MWh	2.01	12.75	11.25		7
	Fixed Cost O&M	$1000s	22,286	41,256	46,988		8
	Property Tax	$1000s	2,939	9,377	11,978		9
	Admin & General	$1000s	4,977	23,207	27,488		10
	Spot Market Net Revenues	$1000s	77,163	235,926	355,799	668,887	11
COSS Capital Recovery	Net Plant	$1000s	72,891	523,841	669,159		12
	Net Capital Additions	$1000s		83,838	129,401		13
	Spare Parts	$1000s	2,025	16,880	22,182		14
	Working Capital and Fuel Inventory	$1000s	10,327	19,769	23,494		15
	Capital Recovery - Return	$1000s	7,290	55,103	72,199		16
	Capital Recovery - Depreciation	$1000s	3,645	20,256	19,964		17
	Capital Recovery - Taxes	$1000s	2,460	18,597	24,367		18
	Cost of Service Revenue Requirement	$1000s	103,923	284,688	343,949	732,559	19
	Over-recovery from Revs from Market vs. COSS	$1000s	63,768	141,970	239,269	445,006	20
Rate of Return on Equity of Overrecovery	Total Going Forward Fixed Costs	$1000s	30,202	73,840	86,454		21
	Net Spot Mkt Rev less Depreciation (EBIT)	$1000s	73,518	215,670	335,835		22
	Net Revenues Return on Equity (EBT)	$1000s	69,938	188,608	300,377		23
	Taxes	$1000s	27,888	75,207	119,775		24
	Return on Equity as %	%	123.33	44.00	53.48		25

Attachment 2-2
Data Source References to Attachment 2-1

1	ISO-NE, *2005-2014 Forecast Report of Capacity, Energy Loads and Transmission* (incorporates Millstone 2 update from ISO-NE RTEP04 Technical Appendix). Capacity reflects weighted summer and winter ratings.
2	BH3: Response of PSEG to interrogatory of Connecticut Energy Advisory Board in Connecticut Siting Council, docket F-2005 (June 15, 2005); consistent with assumption for base-load plant; M2 and M3 (see Stu Dalton, Director Fossil Emission Control and Distributed Resources, EPRI, "Cost Comparison IGCC and Advanced Coal" Roundtable in Deploying Advanced Clean Coal Plants (July 29, 2004), panel 3 ("Dalton EPRI Report"): *See below*, Nuclear Energy Institute (NEI), *US Nuclear Power Plants, 2002-2004 Capacity Factors* (average of prior three years – See Attachment 2-3)
3	Row 1 x Row 2 x hours in period
4	Average hourly LMP at nodes 340, 484 and 485 for period 09 07 04 to 09 06 05
5	(Row 4 x Row 5)/1000
6	BH3: EIA, *Electric Power Monthly* (April 2005), Table 4.10.B (for New England) (assume 10,000 HR for BH3 – Dalton EPRI Report); Millstone: NEI, *A Solid Foundation, A Prosperous Future* (Feb. 2005) (reports that for top quartile of nuclear plants production costs (fuel and variable O&M) is $15/MWH (25% of which is fuel) and total dispatch costs (including fixed O&M) is $20/MWH (assumed for M3); average is $17/MWH and $23/MWH (assumed for M2).
7	BH3:Wisconsin PSC, FEIS WEPCO coal project, Chap. 2, pp. 14-15; Dalton EPRI Report; Millstone: NEI, *A Solid Foundation, A Prosperous Future* (Feb. 2005) (reports that for top quartile of nuclear plants production costs (fuel and variable O&M) is $15/MWh (25% of which is fuel) and total dispatch costs (including fixed O&M) is $20/MWh (assumed for M3): M2 assumed to equal average variable cost $17/MWh and total operating cost $23/MWh.
8	BH3: Wisconsin PSC, FEIS WEPCO Coal Project, Chapter 2, pp. 14-15; Dalton EPRI Report (increased by factor of 1.5 to reflect Northeast US location and age); Millstone: NEI, *A Solid Foundation, A Prosperous Future* (Feb. 2005) (reports that for top quartile of nuclear plants production costs (fuel and variable O&M) is $15/MWh (25% of which is fuel) and total dispatch costs (including fixed O&M) of $20/MWh (assumed for M3); M2 assumed to equal average of $17/MWH (variable) and $23/MWh total operating costs.
9	City of Bridgeport fiscal 2004 mill rate is 40.32; Town of Waterford fiscal 2005 mill rate is 17.9
10	FERC, *Order on Rehearing and Compliance*, FERC docket ER03-563, Devon Power Company et al. (July 24, 2003) sets A&G at 18% of production demand related O&M.
11	Row 5- Row 3*(Row 6 +Row7) -Sum of Rows(8+9+10)
12	Net plant for BH3 is net book cost of sale by UI to Wisvest (DPUC docket 98-10-07)and assumes subsequent capital additions net against subsequent depreciation;Net plant for Millstone 2 and 3 is purchase price (excl. fuel) prorated across the two plants by MW, capital additions since purchase are assumed to net against depreciation
13	$350MM cited as capital investment in the Millstone Units since purchase by Dominion in 2001 by Mark McGittrick, Pres. and CEO, Dominion Generation, Connecticut Power and Energy Society, Northeast Energy and Commerce Association, 12th Annual New England Energy Conference (June 14, 2005).
14	0.027 of net plant
15	1/8 of annual variable fuel and variable O&M and fixed O&M costs
16	Assumes 60/40 Debt/Equity and assumptions set forth below
17	Assumes remaining lives for plant per Attachment 2-5
18	Combined state and federal income tax rate (Attachment 2-5) multiplied against equity return (Attachment 2-4)
19	Sum of rows 8+9+10+16+17+18

20	Row 5 less Row 19
21	Sum of Rows 8 + 9 + 10
22	Row 11 – Row 17
23	Row 22 less interest component of return (see Attachment 2-4)
24	Row 23 * aggregate tax rate (see Attachment 2-6)
25	(Row 23-Row 24)/(Row 12 + Row 13 + Row 14 + Row 15)

Attachment 2-3 Nuclear Plant Capacity Factor				
Year	2002	2003	2004	Average
Millstone 2	81.3	80.5	98.5	86.77
Millstone 3	88.3	101.1	89.1	92.83
Source: NEI, US Nuclear Power Plants, 2002-2004 Capacity Factors				

Attachment 2-4 Capital Recovery Assumptions: Return			
	%	% of Total Capitalization	Weighted Percentage
Interest	7	60	4.2
Return on Equity	10.88	40	4.352
Total			8.552

Attachment 2-5 Capital Recovery Assumptions: Depreciation	
	Remaining Life
BH3	20
Millstone2	30
Millstone3	40
Source: Nuclear plants (NRC press release 04-033 (March 12, 2004) announcing filing of license renewal applications seeking 20 year extensions to M2 (current term expiration: 7/31/15) and M3 (11/25/25) licenses).	

Attachment 2-6 Capital Recovery Assumptions:Taxes	
State Tax Rate	0.075
Fed. Tax Rate	0.35
Aggregate Rate	0.39875

Attachment 2-7
Norwalk Harbor Units Overrecovery of Cost of Service for 2004 (using NRG's unapproved COSS filing for Norwalk Harbor from 2003)

		Norwalk Harbor 1 and 2 Units		Documentary Source
Generating Capacity	MW	330		
Fixed O&M incl. A&G	$	31,808,978		A. Lovinger Testimony, Sched 1 p 1of 1 from ER03-563 02/26/03
- Production	$		25,865,803	Lovinger Test. Sched 2. p. 3 of 3 ER03-563
- A&G	$		5,216,180	Lovinger Test. Sched 2. p. 3 of 3 ER03-563
- Other	$		725,994	Lovinger Test. Sched 2. p. 3 of 3 ER03-563
Depreciation	$	6,495,176		A. Lovinger Testimony, Sched 1 p 1of 1 from ER03-563 02/26/03
Taxes - Federal	$	742,061		Tax Rate multiplied by

				COSS Return on Equity Component
Taxes - State	$	171,906		Tax Rate multiplied by COSS Return on Equity Component
Taxes - Other	$	1,504,069		A. Lovinger Testimony, Sched 1 p 1of 1 from ER03-563 02/26/03
Return	$	3,397,643		See Attachment 2-8 below re assumptions
Cost of Service Annual Revenue Requirement	$	44,119,832		A. Lovinger Testimony, Sched 1 p 1of 1 from ER03-563 02/26/03 [adjusted by capital structure filed in ER04-464, see below].
Rate Base	$	38,037,461		A. Lovinger Testimony, Sched 3 p 1 of 3 from ER03-563 02/26/03
Estimated EBIDTA (2004)	$	39,500,000		NRG 2004 3d Quarter Financial Results, p. 8
Overrecovery	$	21,972,966		(Assumes EBIDTA estimate excludes A&G as a deduct)

Calculation of Overrecovery Rate of Return on Equity

EBIT	$	27,788,644		Assumes 2004 3d Quarter EBIDTA estimate
Return on Equity Component	$	24,265,044		
Return Less Taxes	$	14,589,358		
Return on Equity	%	**115**		

Attachment 2-8 – Norwalk Harbor Units 1 and 2 Capital Recovery Assumptions – Return on Equity				
		% of Total Capitalization	Rate	Weighted Rate
Debt		66.7	7.96	5.31
Equity		33.3	10.88	3.62
Total				8.93
A. Lovinger Testimony, Sched 4 p. 1 of 1 from ER04-464 01/16/04				

Attachment

3
Not Provided